

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D
Under the Securities Exchange Act of 1934

LIGAND PHARMACEUTICALS INCORPORATED

(Name of Issuer)

Common Stock, \$0.001 par value

(Title of Class of Securities)

53220K 20 7

(CUSIP Number)

William F. Daniel
Elan Corporation, plc
Lincoln House
Lincoln Place
Dublin 2, Ireland
(353) 1-709-4000

Copy to:
Lisabeth F. Murphy, Esq.
Athena Neurosciences, Inc.
800 Gateway Boulevard
South San Francisco, California 94080
(650) 877-0900
Telecopy: (650) 875-3620

(Name, Address and Telephone Number of Person Authorized
to Receive Notices and Communications)

November 9, 1998

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of ss.ss. 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box //.

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See ss. 240.13d-7(b) for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SCHEDULE 13D

CUSIP No. 53220K 20 7

1 NAME OF REPORTING PERSON

I.R.S. IDENTIFICATION NO. OF ABOVE PERSON (ENTITIES ONLY)

Elan Corporation, plc

I.R.S. Employer Identification No.: NA

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) //
(b) //

N/A

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC

5 CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e) N/A

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Ireland

7 SOLE VOTING POWER

NUMBER OF SHARES 5,041,160

BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH 8 SHARED VOTING POWER

None

9 SOLE DISPOSITIVE POWER

5,041,160

10 SHARED DISPOSITIVE POWER

None

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

5,041,160

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES //

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

11.8 (based upon outstanding common stock as of October 31, 1998)

14 TYPE OF REPORTING PERSON

CO

Item 1. Security and Issuer.

This statement relates to the Common Stock, \$0.001 par value ("Common Stock"), of Ligand Pharmaceuticals Incorporated (the "Issuer"), a Delaware corporation, whose principal executive offices are located at 10275 Science Center Drive, San Diego, California 92121.

Item 2. Identity and Background.

This Form 13-D is filed on behalf of Elan Corporation, plc ("Elan"), a public limited company organized and existing under the laws of Ireland.

Elan is a leading worldwide specialty pharmaceutical company. The principal business and office address of Elan is: Lincoln House, Lincoln Place, Dublin 2, Ireland. Information as to the name, business address, present principal occupation or employment and organization in which such occupation or employment is conducted and citizenship of each director, executive officer and controlling person of Elan is annexed hereto as Schedule A, and is incorporated herein by reference.

Neither Elan nor, to the best of Elan's knowledge, any of the persons listed on Schedule A hereto, has during the last five years (i) been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. Sources and Amount of Funds or Other Consideration.

Pursuant to a Stock Purchase Agreement, dated as of September 30, 1998, by and between the Issuer and Elan International Services, Ltd., a wholly-owned subsidiary of Elan ("EIS"), EIS acquired 1,278,970 shares of Common Stock (the "First Shares") on September 30, 1998 for an aggregate cash purchase price of \$14,900,000.50. In addition, pursuant to a Securities Purchase Agreement, dated as of November 6, 1998, by and among the Issuer, EIS and Elan (the "Purchase Agreement") (a copy of which is filed as an exhibit to this Schedule 13D), on November 9, 1998, EIS acquired (i) an additional 437,768 shares of Common Stock (the "Second Shares") for an aggregate cash purchase price of \$5,099,997.20 and (ii) zero coupon convertible senior notes due 2008 of the Issuer with an 8.0% per annum yield to maturity (the "Notes") and an issue price of \$30,000,000 (the "Initial Notes"). The issue price plus all accrued interest on the Initial Notes is convertible into Common Stock of the Issuer at any time at the option of EIS at a conversion price of \$14.00 per share. Finally, pursuant to a Development, License and Supply Agreement, dated as of November 6, 1998 (the "License Agreement") (a copy of which is filed as an exhibit to this Schedule 13D), by and between the Issuer and Elan, on November 9, 1998, Elan acquired (i) 429,185 shares of Common Stock of the Issuer (the "Third Shares") and (ii) Notes of the Issuer (the

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"Additional Notes" and, together with the First Shares, the Second Shares, the Third Shares and the Initial Notes, the "Securities") with an issue price of \$10,000,000, in each case, in lieu of certain cash license fees payable by the Issuer to Elan pursuant to the License Agreement. The issue price plus all accrued interest on the Additional Notes is convertible into Common Stock of the Issuer at any time at the option of Elan at a conversion price of \$14.00 per share. The First Shares, the Second Shares and the Initial Notes were purchased by EIS with general corporate funds. None of such funds were borrowed.

Item 4. Purpose of Transaction.

Elan acquired the Securities for the purpose of making an investment in the Issuer and in connection with the execution of the License Agreement.

Each of the Initial Notes and the Additional Notes are convertible into Common Stock of the Issuer at the option of EIS and Elan, respectively, at a conversion price of \$14.00 per share. The number of shares of Common Stock into which the Initial Notes and the Additional Notes may be converted is based upon the quotient obtained by dividing the issue price thereof plus all accrued interest thereon to the conversion date by \$14.00.

The Issuer has granted to Elan and EIS certain registration rights for the First Shares, the Second Shares and the Third Shares and the shares of Common Stock issuable upon conversion of the Initial Notes and the Additional Notes.

Pursuant to the Purchase Agreement, subject to certain conditions, at the Issuer's request, EIS will purchase additional Notes with an issue price of up to \$70,000,000 on or before December 31, 1999. Such Notes will be convertible into Common Stock of the Issuer at the option of EIS at a conversion price equal to the average of the closing prices of the Common Stock for the 20 consecutive trading days immediately preceding the issue date of such Notes, plus a premium;

provided that the conversion price of such Notes will not be less than \$14.00 or greater than \$20.00 per share. In addition, pursuant to the License Agreement, Elan may, at the option of the Issuer, acquire additional shares of Common Stock in lieu of certain cash fees which may become payable by the Issuer to Elan pursuant thereto upon the achievement of certain milestones.

Other than as set forth above, neither Elan nor EIS has any present plans or intentions which would result in or relate to any of the transactions described in subparagraphs (a) through (j) of Item 4 of Schedule 13D.

The foregoing descriptions of the Purchase Agreement and the License Agreement do not purport to be complete and are qualified in their entirety by reference to the full text thereof, copies of which are filed herewith as Exhibits 1 and 2 and are incorporated herein by reference.

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Item 5. Interest in Securities of the Issuer.

(a) Elan is the beneficial owner of 5,041,160 shares of Common Stock, or approximately 11.8%, of the outstanding shares of Common Stock (based upon the outstanding shares of Common Stock as of October 31, 1998 and the shares of Common Stock issuable upon conversion of the Initial Notes and the Additional Notes). To the best knowledge of Elan, no other person named in Item 2 above beneficially owns any shares of Common Stock of the Issuer.

(b) Elan has sole power to vote and sole authority to dispose or direct the disposition of all shares of Common Stock reported by this Schedule 13D.

(c) See Items 3 and 4 above.

(d) N/A

(e) N/A

Item 6. Contracts, Arrangements, Understandings
or Relationships with Respect to
Securities of the Issuer.

There are no contracts, arrangements, understandings or relationships described in Item 6 of Schedule 13D.

Item 7. Items to be Filed as Exhibits.

Exhibit 1* Securities Purchase Agreement, dated as of November 6, 1998, by and among Elan, EIS and the Issuer.

Exhibit 2* Development, License and Supply Agreement, dated as of November 9, 1998, by and between Elan and the Issuer.

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* Certain confidential portions of these Exhibits were omitted by means of marking such portions with an asterisk (the "Mark"). These Exhibits have been filed separately with the Secretary of the Commission without the Mark pursuant to Elan's Request for Confidential Treatment under Rule 24b-2 of the Securities Exchange Act of 1934.

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Signature

The undersigned certifies that, after reasonable inquiry and to the best of its knowledge and belief, the information set forth in this statement is true, complete and correct.

January 6, 1999

ELAN CORPORATION, PLC

By: /s/ William F. Daniel

Name: William F. Daniel
Title: Group Financial Controller

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Schedule A

The (a) name, (b) business address, (c) principal occupation or employment and the organization in which such occupation or employment is conducted and (d) citizenship of each director (other than Messrs. Armen, Balog, Boushel, Crowley, Gillespie, McIntyre, McLaughlin, Selkoe and Thornburgh) and officer of Elan Corporation, plc ("Elan") are set forth in the following table:

1. (a) Donal J. Geaney
(b) Lincoln House, Lincoln Place, Dublin 2, Ireland
(c) Director, Chairman of the Board and Chief Executive Officer of Elan
(d) Ireland
2. (a) John Groom
(b) Lincoln House, Lincoln Place, Dublin 2, Ireland
(c) Director, President and Chief Operating Officer of Elan
(d) United Kingdom
3. (a) Thomas G. Lynch
(b) Lincoln House, Lincoln Place, Dublin 2, Ireland
(c) Director, Executive Vice President and Chief Financial Officer of Elan
(d) United Kingdom
4. (a) William F. Daniel
(b) Lincoln House, Lincoln Place, Dublin 2, Ireland
(c) Group Vice President, Finance and Group Controller of Elan
(d) Ireland
5. (a) Lisabeth F. Murphy
(b) 800 Gateway Boulevard, South San Francisco, CA 94080
(c) Vice President and General Counsel of Elan
(d) United States
6. (a) Mark A. Pearson
(b) Lincoln House, Lincoln Place, Dublin 2, Ireland
(c) Partner, McCann FitzGerald; Secretary of Elan
(d) Ireland

The (a) name, (b) business address, (c) principal occupation or employment and the organization in which such occupation or employment is conducted and (d) citizenship of each director (other than Messrs. Geaney, Groom, and Lynch) are set forth in the following table:

1. (a) Garo H. Armen, Ph.D.
(b) 630 Fifth Avenue, Suite 2167, New York, New York 10111
(c) Managing General Partner, Armen Partners, L.P.; Chairman of the Board and Chief Executive Officer of Antigenics, LLC
(d) United States

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2. (a) James Balog
(b) c/o Elan Corporation, plc, Lincoln House, Lincoln Place, Dublin 2, Ireland
(c) Retired
(d) United States

3. (a) Brendan E. Boushel
(b) 9 Upper Mount Street, Dublin 2, Ireland
(c) Retired
(d) Ireland
4. (a) Laurence G. Crowley
(b) c/o Elan Corporation, plc, Lincoln House, Lincoln Place,
Dublin 2, Ireland
(c) Executive Chairman, Michael Smurfit Graduate School of
Business of University College Dublin
(d) Ireland
5. (a) Alan R. Gillespie, Ph.D.
(b) c/o Elan Corporation, plc, Lincoln House, Lincoln Place,
Dublin 2, Ireland
(c) Managing Director, Goldman Sachs International
(d) United Kingdom
6. (a) Kevin McIntyre, M.D.
(b) c/o Elan Corporation, plc, Lincoln House, Lincoln Place,
Dublin 2, Ireland
(c) Associate Clinical Professor of Medicine at Harvard
Medical School
(d) United States
7. (a) Kyran McLaughlin
(b) Davy House, 49 Dawson Street, Dublin 2, Ireland
(c) Joint Chief Executive, Davy Stockbrokers
(d) Ireland
8. (a) Dennis J. Selkoe, M.D.
(b) c/o Elan Corporation, plc, Lincoln House, Lincoln Place,
Dublin 2, Ireland
(c) Professor of Neurology and Neuroscience at Harvard Medical
School
(d) United States

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9. (a) Richard L. Thornburgh
(b) c/o Elan Corporation, plc, Lincoln House, Lincoln Place,
Dublin 2, Ireland
(c) Counsel to the law firm of Kirkpatrick & Lockhart LLP
(d) United States
10. (a) Kieran McGowan
(b) c/o Elan Corporation, plc, Lincoln House, Lincoln Place,
Dublin 2, Ireland
(c) Retired
(d) Ireland

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Exhibit Index

Exhibit No.	Exhibit
1*	Securities Purchase Agreement, dated as of November 6, 1998, by and among Elan Corporation, plc and Ligand Pharmaceuticals Incorporated.
2*	Development, License and Supply Agreement, dated as of November 9, 1998, by and between Elan Corporation, plc and Ligand Pharmaceuticals Incorporated.

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* Certain confidential portions of these Exhibits were omitted by means of marking such portions with an asterisk (the "Mark"). These Exhibits have been filed separately with the Secretary of the Commission without the Mark pursuant to Elan's Request for Confidential Treatment under Rule 24b-2 of the Securities Exchange Act of 1934.

Exhibit 1

CONFIDENTIAL TREATMENT REQUESTED

SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (the "Agreement"), dated as of November 6, 1998, by and among Ligand Pharmaceuticals Incorporated, a Delaware corporation (the "Company"), Elan International Services, Ltd., a Bermuda corporation (the "Purchaser"), and Elan Corporation, plc, a public limited company organized under the laws of Ireland ("Elan").

RECITALS

WHEREAS, the Company, the Purchaser and Elan have entered into a binding letter of intent, dated as of September 28, 1998 (the "Letter of Intent");

WHEREAS, pursuant to the Letter of Intent, the Purchaser has agreed to purchase from the Company shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), and Zero Coupon Convertible Senior Notes due 2008 (the "Notes") of the Company, in each case, on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

SECTION 1. Purchase and Sale of Common Stock and Notes.

(a) Shares and Initial Notes. On the basis of the representations, warranties, agreements and covenants herein contained and subject to the terms and conditions herein set forth, at the Initial Closing (as defined in Section 2(a)) the Company shall sell to the Purchaser, and the Purchaser shall purchase from the Company, (i) 437,768 shares of Common Stock (the "Shares") at a purchase price of \$11.65 per share (the "Share Purchase Price"), (ii) Notes (the

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"Initial Notes") having an issue price of \$30,000,000 (the "Initial Note Issue Price") and the Initial Note Conversion Price (as defined in Section 12(a)), to be issued in the form of the promissory note attached hereto as Exhibit A and (iii) Notes (the "License Notes") having an issue price of \$10,000,000 (the "License Note Issue Price") and the License Note Conversion Price (as defined in Section 12(b)), to be issued in the form of the promissory note attached hereto as Exhibit A and in lieu of the payment by the Company to Elan of \$10,000,000 in cash pursuant to clause 10.1.1(2) of the License Agreement (as defined in Section 6(f)).

(b) Additional Notes. On the basis of the representations, warranties, agreements and covenants herein contained and subject to the terms and conditions herein set forth, the Company may, upon [* * *] on or prior to December 31, 1999 and upon not less than 60 days' prior written notice (the "Purchase Request"), request that the Purchaser purchase from the Company additional Notes (the "Additional Notes" and, together with the Initial Notes and the License Notes, the "Securities"), having an aggregate issue price of not more than \$70,000,000 (the aggregate issue price of the Additional Notes to be issued and sold on each such occasion being referred to herein as the "Additional Note Issue Price") and having the Additional Note Conversion Price (as defined in Section 12(c)), to be issued in the form of the promissory note attached hereto as Exhibit A; provided, however, that the gross proceeds to be received by the Company as a result of the issuance and sale of such Additional Notes shall be used solely to, without duplication, (i) make all remaining

milestone payments, if any, due and payable to the stockholders, creditors and other obligees of Seragen, Inc. ("Seragen"), pursuant to and in accordance with the terms of that certain Agreement and Plan of Reorganization, dated as of May 11, 1998, by and among Seragen, the Company and Knight Acquisition Corp., as in effect on the date of this Agreement, or as amended with the Purchaser's written consent (the "Seragen Payments"), (ii) pay the purchase price for the assets of Marathon Biopharmaceuticals, LLC ("Marathon"), pursuant to and in accordance with the terms of that certain Option and Asset Purchase Agreement, dated as of May 11, 1998, by and among the Company, Marathon, 520 Commonwealth Avenue Real Estate Corp. and 660 Corporation, as in effect on the date of this Agreement, or as amended with the Purchaser's written consent (the "Marathon Payment"), and (iii) otherwise finance the development of the Company's business. Each Purchase Request shall set forth (i) the proposed closing date of such purchase and sale of Additional Notes, which shall be a date at least 60 days but not more than 180

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days prior to such Additional Closing Date (each such date, an "Additional Closing Date"), (ii) the Additional Note Issue Price of the Additional Notes proposed to be issued and sold by the Company on such Additional Closing Date and (iii) a description in reasonable detail of the transaction or transactions pursuant to which the Company proposes to utilize the gross proceeds to be received by the Company from such proposed issuance and sale of Additional Notes, which description shall be accompanied by all documents and agreements entered into or proposed to be entered into in connection with such transaction or transactions, to the extent such documents or any preliminary drafts thereof are available at the time such Purchase Request is provided by the Company.

(c) License Shares. On the basis of the representations, warranties, agreements and covenants herein contained and subject to the terms and conditions herein set forth, pursuant to the License Agreement, the Company may, at its option, issue to Elan shares of Common Stock (the "License Shares") in lieu of making cash payments thereunder (each such issuance, a "License Share Issuance") at the times set forth in, and in accordance with the terms of, clauses 10.1.1(1), (3) and (4) of the License Agreement.

SECTION 2. Closings.

(a) Initial Closing. The closing of the sale and purchase of each of the Shares, the Initial Notes, the License Notes and the License Shares to be issued under clause 10.1.1(1) of the License Agreement (the "Initial Closing") shall take place at the offices of Cahill Gordon & Reindel, 80 Pine Street, New York, NY 10005, at 10:00 AM, New York City time, on November 9, 1998, or such other time and place as the Company and the Purchaser may agree (the "Initial Closing Date"). At the Initial Closing, the Company shall deliver to the Purchaser (i) a certificate or certificates, registered in the name of the Purchaser, representing the Shares, against payment of the Share Purchase Price, (ii) one or more promissory notes in the form attached hereto as Exhibit A, registered in the name of the Purchaser, representing the Initial Notes, against payment of the Initial Note Issue Price and (iii) one or more promissory notes in the form attached hereto as Exhibit A, registered in the name of the Purchaser, representing the License Notes.

(b) Additional Closings. The closing of each purchase and sale of Additional Notes (each such closing, an "Additional Closing") shall take place at the offices of Ca-

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hill, Gordon & Reindel, 80 Pine Street, New York, NY 10005, at 10:00 AM, New York City time, on the Additional Closing Date set forth in the Purchase Notice delivered to the Purchaser by the Company in accordance with Section 1(b), or such other time and place as the Company and the Purchaser may agree. At each Additional Closing, the Company shall deliver to the Purchaser one or more promissory notes in the form attached hereto as Exhibit A, registered in the name of the Purchaser and/or in the name of one or more of its Affiliates (as defined in Section 14(a)) (subject to compliance with Regulation S under the

Securities Act of 1933, as amended (the "Securities Act")) and in such denomination or denominations as the Purchaser may direct in writing, representing such Additional Notes, against payment of the Additional Note Issue Price.

(c) License Share Issuances. Each License Share Issuance shall take place at the offices of Cahill Gordon & Reindel, 80 Pine Street, New York, NY 10005, at 10:00 AM, New York City time, on the applicable dates set forth in clauses 10.1.1(1), (3) and (4) of the License Agreement, or such other time and place as the Company and Elan may agree (each such date, a "License Share Issuance Date"). At each such License Share Issuance, the Company shall deliver to Elan a certificate or certificates, registered in the name of Elan and/or in the name of one or more of its Affiliates, (subject to compliance with Regulation S under the Securities Act) as Elan may direct in writing, representing the License Shares to be issued pursuant to and in accordance with the License Agreement.

(d) Payments. Each payment required to be made by the Purchaser to the Company pursuant to this Section 2 shall be made by wire transfer in immediately available funds to an account designated in writing by the Company

SECTION 3. Representations of the Company. Except as otherwise set forth in the Schedule of Exceptions attached hereto, the Company represents and warrants to and agrees with the Purchaser as follows:

(a) Each of the Company and the Subsidiaries (as defined in paragraph (f) of this Section 3) is duly incorporated, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite corporate power and authority to own its properties and conduct its business as now being conducted. Each of the Company and the Subsidiaries is duly qualified to do business as a foreign corporation and is in good standing in all other jurisdictions where the ownership or leasing

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of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified would not, individually or in the aggregate, have a material adverse effect on the business, assets, liabilities (contingent or otherwise), operations, condition (financial or otherwise), solvency, properties, prospects or material agreements of the Company and its Subsidiaries, taken as a whole (any such event, a "Material Adverse Effect").

(b) The Company has all requisite corporate power and authority to execute, deliver and perform each of its obligations under the Initial Notes and the License Notes. The Initial Notes and the License Notes have each been duly and validly authorized by the Company and, when executed by the Company and delivered to the Purchaser in accordance with the terms of this Agreement, will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except that the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought.

(c) Other than any stockholder approval that may be required by law, the Company has all requisite corporate power and authority to execute, deliver and perform each of its obligations under the Additional Notes. The Additional Notes, if and when issued, will have been duly and validly authorized by the Company and, when executed by the Company and delivered to the Purchaser in accordance with the terms of this Agreement, will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, except that the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought.

(d) The Company has all requisite corporate power and authority to execute, deliver and perform each of its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Company and constitutes a valid and legally binding agree-

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ment of the Company, enforceable against the Company in accordance with its terms, except that the enforcement hereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought.

(e) The Company has all requisite corporate power and authority to execute, deliver and perform its obligations under the Registration Rights Agreement (as defined in Section 6(d) hereof). The Registration Rights Agreement has been duly and validly authorized by the Company and, when executed and delivered by the Company, will constitute a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, except that (A) the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought and (B) any rights to indemnity or contribution thereunder may be limited by federal and state securities laws and public policy considerations.

(f) The authorized, issued and outstanding capitalization of the Company as of the date hereof consists of: (i) 80,000,000 shares of Common Stock, of which 42,526,245 shares were issued and outstanding as of September 30, 1998, and (ii) 5,000,000 shares of convertible preferred stock (80,000 shares of which have been designated as "Series A Participating Preferred Stock"), of which no shares are issued and outstanding as of the date of this Agreement; all of the subsidiaries of the Company are listed on Schedule 3(f)(i) hereto (each, a "Subsidiary" and collectively, the "Subsidiaries"); all of the outstanding shares of capital stock of the Company and the Subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable and were not issued in violation of any preemptive or similar rights; all of the outstanding shares of capital stock of the Subsidiaries are owned, directly or indirectly, by the Company, free and clear of all liens, encumbrances, equities and claims or restrictions on transferability (other than those imposed by the Securities Act and the securities or "Blue Sky" laws of certain jurisdictions) or voting; except for

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the Securities and except as described in the SEC Reports (as defined in paragraph (m) of this Section 3) or as otherwise set forth on Schedule 3(f)(ii) hereto, there are no (i) options, warrants or other rights to purchase, (ii) agreements or other obligations to issue or (iii) other rights to convert any obligation into or exchange any securities for, shares of capital stock of or ownership interests in the Company or any of the Subsidiaries; except for the Subsidiaries, the Company does not own, directly or indirectly, any shares of capital stock or any other equity or long-term debt securities or have any equity interest in any firm, partnership, joint venture or other entity.

(g) The Shares, when issued, sold and delivered to the Purchaser at the Initial Closing against payment therefor in accordance with the terms of this Agreement, will be duly and validly issued, fully paid and nonassessable, will not be issued in violation of any preemptive or similar rights and will be free of any liens, encumbrances or restrictions on transfer other than those imposed by the Securities Act and applicable state securities or "Blue Sky" laws.

(h) The License Shares, if and when issued and delivered to Elan in accordance with the terms of this Agreement and the License Agreement, will

be duly and validly issued, fully paid and nonassessable, will not be issued in violation of any preemptive or similar rights and will be free of any liens, encumbrances or restrictions on transfer other than those imposed by the Securities Act and applicable state securities or "Blue Sky" laws.

(i) The shares of Common Stock issuable upon conversion of the Initial Notes and the License Notes have been, and, upon the issuance of any Additional Notes, the shares of Common Stock issuable upon conversion of such Additional Notes will be, reserved for issuance upon such conversion and, if and when issued upon such conversion, will be duly and validly issued, fully paid and nonassessable, will not be issued in violation of any preemptive or similar rights and will be free of any liens, encumbrances or restrictions on transfer other than those imposed by the Securities Act and applicable state securities or "Blue Sky" laws. The shares of Common Stock issuable upon conversion of the Securities are referred to herein as the "Conversion Shares."

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(j) No consent, approval, authorization or order of any court or governmental agency or body or third party is required for the issuance and sale by the Company of the Shares, the Conversion Shares, the License Shares or the Securities or the consummation by the Company of the other transactions contemplated hereby or by the Registration Rights Agreement and, in the case of the Additional Notes and the License Shares, no such consent, approval, authorization or order will be required upon any issuance and sale thereof by the Company, except that no representation or warranty is made with respect to filings required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), in connection with the issuance of the License Shares or upon conversion of the Securities. None of the Company or the Subsidiaries is (i) in violation of its certificate of incorporation or bylaws, (ii) in breach or violation of any statute, judgment, decree, order, rule or regulation applicable to it or any of its properties or assets, except for any such breach or violation which would not, individually or in the aggregate, have a Material Adverse Effect, or (iii) in breach of or default under (nor has any event occurred which, with notice or passage of time or both, would constitute a default under) or in violation of any of the terms or provisions of any indenture, mortgage, deed of trust, loan agreement, note, lease, license, franchise agreement, permit, certificate, contract or other agreement or instrument to which any of them is a party or to which any of them or their respective properties or assets is subject (collectively, "Contracts"), except for any such breach, default, violation or event which would not, individually or in the aggregate, have a Material Adverse Effect.

(k) None of the Company, the Subsidiaries, any of their respective Affiliates (as defined in Rule 501(b) of Regulation D under the Securities Act) or any person acting on its or their behalf has engaged in any directed selling efforts (as that term is defined in Regulation S under the Securities Act ("Regulation S")) with respect to the Shares, the Securities or the License Shares; the Company, the Subsidiaries and their respective Affiliates (as defined in Rule 501(b) of Regulation D under the Securities Act) and any person acting on its or their behalf have complied and will comply with the offering restrictions requirement of Regulation S.

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(l) The execution, delivery and performance by the Company of this Agreement and the Registration Rights Agreement and the consummation by the Company of the transactions contemplated hereby and thereby will not conflict with or constitute or result in a breach of or a default under (or an event which with notice or passage of time or both would constitute a default under) or violation of any of (i) the terms or provisions of any Contract, except for any such conflict, breach, default, violation or event which would not, individually or in the aggregate, have a Material Adverse Effect, (ii) the certificate of incorporation or bylaws of the Company or any of the Subsidiaries or (iii) (assuming compliance with all applicable

state securities or "Blue Sky" laws and assuming the accuracy of the representations and warranties of the Purchaser and Elan set forth in Section 4 of this Agreement) any statute, judgment, decree, order, rule or regulation applicable to the Company or any of the Subsidiaries or any of their respective properties or assets, except for any such conflict, breach or violation which would not, individually or in the aggregate, have a Material Adverse Effect.

(m) The Company has filed with the Securities and Exchange Commission (the "SEC") all required forms, reports, registration statements and documents required to be filed by it with the SEC since December 31, 1996 (collectively, the "SEC Reports"), all of which complied as to form when filed in all material respects with the applicable provisions of the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as the case may be. As of their respective dates, the SEC Reports (including all exhibits and schedules thereto and documents incorporated by reference therein) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(n) The audited consolidated financial statements and unaudited consolidated interim financial statements of the Company and the Subsidiaries included or incorporated by reference in any of the SEC Reports have been prepared in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved, except as otherwise stated therein, and present fairly, in all material respects, the consolidated finan-

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cial position of the Company and the Subsidiaries at the dates thereof and the consolidated results of operations and cash flows for the periods then ended (subject, in the case of any unaudited interim financial statements, to normal year-end adjustments and to the extent they include footnotes or may be condensed or summary statements) and such audited financial statements are accompanied by an unqualified opinion thereon by the Company's independent auditors.

(o) Except as set forth on Schedule 3(o), there is not pending or, to the knowledge of the Company, threatened any action, suit, proceeding, inquiry or investigation to which the Company or any of the Subsidiaries is a party, or to which the property or assets of the Company or any of the Subsidiaries are subject, before or brought by any court, arbitrator or governmental agency or body which, if determined adversely to the Company or any such Subsidiary, would, individually or in the aggregate, have a Material Adverse Effect, or which seeks to restrain, enjoin, prevent the consummation of or otherwise challenge (i) the issuance or sale of the Shares, the License Shares or the Securities, (ii) the consummation of the other transactions contemplated by this Agreement or the Registration Rights Agreement or (iii) the issuance of the License Shares pursuant to the License Agreement.

(p) Each of the Company and the Subsidiaries possesses all licenses, permits, certificates, consents, orders, approvals and other authorizations from, and has made all declarations and filings with, all federal, state, local and other governmental authorities, all self-regulatory organizations and all courts and other tribunals presently required or necessary to own or lease, as the case may be, and to operate its respective properties and to carry on its respective businesses as now conducted and as proposed to be conducted ("Permits"), except as disclosed in the SEC Reports and except where the failure to obtain such Permits would not, individually or in the aggregate, have a Material Adverse Effect; each of the Company and the Subsidiaries has fulfilled and performed all of its obligations with respect to such Permits and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other material impairment of the rights of the holder of any such Permit; and none of the Company or the Subsidiaries has received any notice of any proceeding relating to revocation or modification of any such Permit,

except where such revocation or modification would not, individually or in the aggregate, have a Material Adverse Effect.

(q) Since June 30, 1998 and except as otherwise set forth in the SEC Reports, (i) except as set forth on Schedule 3(q), none of the Company or the Subsidiaries has incurred any liabilities or obligations, direct or contingent, or entered into or agreed to enter into any transactions or contracts (written or oral) not in the ordinary course of business, which liabilities, obligations, transactions or contracts would, individually or in the aggregate, be material to the business, assets, liabilities (contingent or otherwise), operations, condition (financial or otherwise), solvency or prospects of the Company and the Subsidiaries, taken as a whole, (ii) none of the Company or the Subsidiaries has purchased any of its outstanding capital stock, nor declared, paid or otherwise made any dividend or distribution of any kind on its capital stock (other than with respect to the Subsidiaries, the purchase of, or dividend or distribution on, capital stock owned by the Company) and (iii) there has not been any material change in the capital stock or long-term indebtedness of the Company or the Subsidiaries.

(r) Each of the Company and the Subsidiaries has filed all necessary federal, state and foreign income and franchise tax returns, except where the failure to so file such returns would not, individually or in the aggregate, have a Material Adverse Effect, and has paid all taxes shown as due thereon; and other than tax deficiencies which the Company or any Subsidiary is contesting in good faith and for which the Company or such Subsidiary has provided adequate reserves, there is no tax deficiency that has been asserted against the Company or any of the Subsidiaries that would, individually or in the aggregate, have a Material Adverse Effect.

(s) Each of the Company and the Subsidiaries has good and marketable title to all real property and good title to all personal property owned by it and good and marketable title to all leasehold estates in the real and personal property being leased by it free and clear of all liens, charges, encumbrances or restrictions, except as set forth on Schedule 3(s) and except to the extent the failure to have such title or the existence of such liens, charges, encumbrances or restrictions would not, individually or in the aggregate, have a Material Adverse Effect.

(t) Each of the Contracts is valid and enforceable against the Company or the Subsidiaries, as the case may be, and to the best of the Company's knowledge, is valid and enforceable against the other party or parties thereto and the Company is not, and has no actual knowledge that any other party is, in default under or in respect of any such Contract, with only such exceptions as would not, individually or in the aggregate, have a Material Adverse Effect.

(u) Each of the Company and the Subsidiaries owns or possesses adequate licenses or other valid rights to use all patents and applications therefore, trademarks, service marks, trade names, copyrights and know-how (collectively, "Proprietary Rights") necessary to conduct the businesses now or proposed to be conducted by it, except for such lack of or defects in ownership as would not, individually or in the aggregate, have a Material Adverse Effect. None of the Company or the Subsidiaries has received any notice that any Proprietary Rights have been declared unenforceable or otherwise invalid by any court or governmental agency other than notices relating to Proprietary Rights the loss of which would not, individually or in the aggregate, have a Material Adverse Effect. Except as set forth on Schedule 3(u), none of the Company or the Subsidiaries has received any notice of infringement of or conflict with (or knows of any such infringement of or conflict with) asserted rights of others with respect to any Proprietary Rights which, if such assertion of infringement or conflict were sustained, would have a Material Adverse Effect.

(v) Except as would not, individually or in the aggregate, have a Material Adverse Effect (A) each of the Company and the Subsidiaries is in compliance with and not subject to liability under applicable Environmental Laws (as defined below), (B) each of the Company and the Subsidiaries has made all filings and provided all notices required under any applicable Environmental Law, and has and is in compliance with all Permits required under any applicable Environmental Laws and each of them is in full force and effect, (C) there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice or demand letter or request for information pending or, to the knowledge of the Company or the Subsidiaries, threatened against the Company or any Subsidiary under any Environmental Law, (D) no lien, charge, encumbrance or restric-

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tion has been recorded under any Environmental Law with respect to any assets, facility or property owned, operated, leased or controlled by the Company or any Subsidiary, (E) none of the Company or the Subsidiaries has received notice that it has been identified as a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any comparable state law, (F) no property or facility of the Company or any Subsidiary is (i) listed or proposed for listing on the National Priorities List under CERCLA or (ii) listed in the Comprehensive Environmental Response, Compensation and Liability Information System List promulgated pursuant to CERCLA, or on any comparable list maintained by any state or local governmental authority.

For purposes of this Agreement, "Environmental Laws" means the common law and all applicable federal, state and local laws or regulations, codes, orders, decrees, judgments or injunctions issued, promulgated, approved or entered thereunder, relating to pollution or protection of public or employee health and safety or the environment, including, without limitation, laws relating to (i) emissions, discharges, releases or threatened releases of hazardous materials into the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), (ii) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of hazardous materials, and (iii) underground and aboveground storage tanks and related piping, and emissions, discharges, releases or threatened releases therefrom.

(w) There is no strike, labor dispute, slowdown or work stoppage with the employees of the Company or the Subsidiaries which is pending or, to the knowledge of the Company or the Subsidiaries, threatened, other than any such strike, labor dispute, slowdown or work stoppage which would not, individually or in the aggregate, have a Material Adverse Effect.

(x) Each of the Company and the Subsidiaries carries insurance in such amounts and covering such risks as is adequate for the conduct of its business and the value of its properties.

(y) None of the Company or the Subsidiaries has any liability for any prohibited transaction or funding defi-

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ciency or any complete or partial withdrawal liability with respect to any pension, profit sharing or other plan which is subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), to which the Company or any Subsidiary makes or ever has made a contribution and in which any employee of the Company or any Subsidiary is or has ever been a participant. With respect to such plans, the Company and the Subsidiaries are in compliance in all material respects with all applicable provisions of ERISA.

(z) Each of the Company and the Subsidiaries (i) makes and keeps accurate books and records and (ii) maintains internal accounting controls which provide reasonable assurance that (A) transactions are executed in

accordance with management's authorization, (B) transactions are recorded as necessary to permit preparation of its financial statements and to maintain accountability for its assets, (C) access to its assets is permitted only in accordance with management's authorization and (D) the reported accountability for its assets is compared with existing assets at reasonable intervals.

(aa) Except as provided in the Registration Rights Agreement, the Company has not granted or agreed to grant any registration rights to any person or entity.

(bb) Immediately after the issuance of each of the Initial Notes, the License Notes and any Additional Notes, the fair value and present fair saleable value of the assets of the Company (on a consolidated basis) will exceed the sum of its stated liabilities and identified contingent liabilities; the Company (on a consolidated basis) is not and will not be (on a consolidated basis) after giving effect to the issuance of each of the Initial Notes, the License Notes or any Additional Notes, (a) left with unreasonably small capital with which to carry on its business as it is proposed to be conducted, (b) unable to pay its debts (contingent or otherwise) as they mature or (c) otherwise insolvent.

(cc) Under the Preferred Share Rights Agreement, dated as of September 13, 1996, between the Company and Wells Fargo Bank, N.A., as amended (the "Rights Agreement"), no event has occurred that has caused or will cause, and none of the execution of this Agreement, the Registration Rights Agreement or the License Agreement, or the consummation of the transactions contemplated hereby

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or thereby, including the issuance and sale of the Shares, the Conversion Shares, the License Shares and the Securities, will cause, rights issued thereunder to become exercisable or a "Distribution Date" to occur, assuming compliance by Elan and its Affiliates with the provisions of Section 14(c) of this Agreement.

(dd) Except as otherwise disclosed to the Purchaser, no person has or will have, as a result of the transactions contemplated by this Agreement or the License Agreement, any right, interest or valid claim against or upon the Company for any commission, fee or other compensation as a finder or broker because of any act by the Company or of any agent of the Company. The Company will pay, and hold the Purchaser harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim for any such commission, fee or other compensation.

Elan is intended to be a third-party beneficiary of each of the representations, warranties and agreements set forth in this Section 3, excluding Section 3(b), (c), (h), (i) and (bb).

SECTION 4. Representations of the Purchaser and Elan.

(a) The Purchaser represents and warrants to and agrees with the Company as follows:

(i) The Purchaser has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by the Purchaser and constitutes a valid and legally binding agreement of the Purchaser enforceable against the Purchaser in accordance with its terms, except that the enforcement hereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought.

(ii) The Purchaser has all requisite corporate power and authority to execute, deliver and perform its obligations under the Registration Rights Agreement. The Regis-

tration Rights Agreement has been duly and validly authorized by the Purchaser and, when executed and delivered by the Purchaser, will constitute a valid and legally binding agreement of the Purchaser enforceable against the Purchaser in accordance with its terms, except that (A) the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought and (B) any rights to indemnity or contribution thereunder may be limited by federal and state securities laws and public policy considerations.

(iii) The Purchaser acknowledges that none of the Shares or the Initial Notes have been, nor will the Additional Notes or the Conversion Shares be, registered under the Securities Act or any other applicable securities laws, are being issued or sold, or will be issued or sold, in transactions not requiring registration under the Securities Act and, unless so registered, may not be offered, sold or otherwise transferred except in compliance with the registration requirements of the Securities Act or any other applicable securities law, pursuant to an exemption therefrom or in a transaction not subject thereto and in each case in compliance with the conditions for transfer set forth in clause (v) of this paragraph (a).

(iv) The Purchaser is outside the United States and is not a "U.S. person" (as such term is defined in Regulation S).

(v) Until the expiration of the "one-year distribution compliance period" within the meaning of Rule 903 of Regulation S, the Purchaser will not sell or otherwise transfer the Shares, the Securities or the Conversion Shares, except (i) to the Company or its Subsidiaries, (ii) pursuant to an effective registration statement which has been declared effective under the Securities Act, (iii) in an offshore transaction in accordance with Rule 904 of Regulation S or (iv) pursuant to any other available exemption from the registration requirements of the Securities Act, including Rule 144 thereunder ("Rule 144"). After the expiration of such "one-year distribution compliance period," the Purchaser will not sell or otherwise transfer the Shares, the Securities or the Conversion Shares, except pursuant to registration under the Securities Act or an available exemption therefrom and, in

any case, in accordance with the provisions of Regulation S and applicable state securities laws.

(vi) The Purchaser understands that the certificates representing the Shares and any Conversion Shares will, so long as appropriate, bear the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR PURSUANT TO A VALID EXEMPTION THEREFROM AND HAVE BEEN SOLD IN RELIANCE ON THE EXEMPTION FROM REGISTRATION PROVIDED BY REGULATION S UNDER THE ACT ("REGULATION S"). THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF REGULATION S (ss.230.901 THROUGH ss.230.905, AND PRELIMINARY NOTES). HEDGING TRANSACTIONS INVOLVING THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE ACT.

THE TRANSFER OF THE SHARES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE CONDITIONS SPECIFIED IN A SECURITIES PURCHASE AGREEMENT, DATED AS OF NOVEMBER 6, 1998, BY AND AMONG THE COMPANY, ELAN INTERNATIONAL

SERVICES, LTD. AND ELAN CORPORATION, PLC, AND THE COMPANY RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH SHARES UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED WITH RESPECT TO SUCH TRANSFER. A COPY OF SUCH CONDITIONS WILL BE FURNISHED BY THE COMPANY TO THE HOLDER HEREOF WITHOUT CHARGE.

(vii) The Purchaser agrees that the Company shall be entitled to make a notation on its records and give instructions to any transfer agent of the Common Stock in order to implement the restrictions on transfer set forth in this Agreement.

(viii) The Purchaser acknowledges that it believes that it has received all information it considers necessary or appropriate and has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the issuance and sale of the Shares and

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the Securities and the business, properties, prospects and financial condition of the Company; provided that this clause (viii) shall in no way limit or modify the representations and warranties of the Company set forth in Section 3 of this Agreement or the right of the Purchaser to rely thereon. The Purchaser acknowledges that it is a sophisticated investor and that an investment in the Shares and the Securities involves a high degree of risk. The Purchaser further acknowledges that the Share Purchase Price may or may not exceed the latest publicly quoted per share "asked" price of the Common Stock.

(ix) The Purchaser is purchasing the Shares and the Securities, and, to the extent that the Purchaser converts the Securities, will acquire the Conversion Shares, for its own account for the purpose of investment and not (i) with a view to, or for sale in connection with, any distribution thereof or (ii) for the account or on behalf of any "U.S. person" (as such term is defined in Regulation S). The Purchaser understands, acknowledges and agrees that it must bear the economic risk of its investment in the Shares, the Conversion Shares and the Securities for an indefinite period of time and that prior to any offer or sale of such securities, the Company may require, as a condition to effecting a transfer of the Shares, the Conversion Shares or the Securities, an opinion of counsel to the Purchaser, acceptable to the Company, as to the registration or exemption therefrom under the Securities Act.

(x) The Purchaser was not formed specifically for the purpose of acquiring the Shares or the Securities purchased or to be purchased pursuant to this Agreement.

(xi) The execution, delivery and performance by the Purchaser of this Agreement and the Registration Rights Agreement and the consummation by the Purchaser of the transactions contemplated hereby and thereby will not conflict with or constitute or result in a breach of or a default under (or an event which with notice or passage of time or both would constitute a default under) or violation of any of (i) the terms or provisions of any indenture, mortgage, deed of trust, loan agreement, note, lease, license, franchise agreement, permit, certificate, contract or other agreement or instrument to which the Purchaser is a party, except for any such conflict, breach, default, violation or event which would not, individually or in the aggregate, have a material adverse ef-

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fect on the business, assets, liabilities (contingent or otherwise), operations, condition (financial or otherwise), solvency, properties, prospects or material agreements of the Purchaser and its subsidiaries, taken as a whole, (ii) the certificate of incorporation or bylaws of the Purchaser or (iii) (assuming compliance with all applicable state securities or "Blue Sky" laws and assuming the accuracy of the representations and warranties of the Company set forth in Section 3 of this Agreement) any statute, judgment, decree, order, rule or regulation

applicable to the Purchaser or any of its respective properties or assets, except for any such conflict, breach or violation which would not, individually or in the aggregate, have a material adverse effect on the business, assets, liabilities (contingent or otherwise), operations, condition (financial or otherwise), solvency, properties, prospects or material agreements of the Purchaser and its subsidiaries, taken as a whole.

(xii) No consent, approval, authorization or order of any court or governmental agency or body or third party is required for the execution, delivery or performance of this Agreement or the Registration Rights Agreement by the Purchaser or the consummation of the transactions contemplated hereby or thereby, except that no representation or warranty is made with respect to filings required by the HSR Act in connection with the conversion of the Securities.

(xiii) Except as otherwise disclosed to the Company, no person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim against or upon the Purchaser for any commission, fee or other compensation as a finder or broker because of any act by the Purchaser or of any agent of the Purchaser. The Purchaser will pay, and hold the Company harmless against, any liability, loss or expense (including without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim for any such commission, fee or other compensation.

(b) Elan represents and warrants to and agrees with the Company as follows:

(i) Elan has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by Elan and

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constitutes a valid and legally binding agreement of Elan enforceable against Elan in accordance with its terms, except that the enforcement hereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought.

(ii) Elan acknowledges that the License Shares will not be registered under the Securities Act or any other applicable securities laws, will be issued in transactions not requiring registration under the Securities Act and, unless so registered, may not be offered, sold or otherwise transferred except in compliance with the registration requirements of the Securities Act or any other applicable securities law, pursuant to an exemption therefrom or in a transaction not subject thereto and in each case in compliance with the conditions for transfer set forth in paragraph (v) of this paragraph (b).

(iii) Elan is outside the United States and is not a "U.S. person" (as such term is defined in Regulation S).

(iv) Until the expiration of the "one-year distribution compliance period" within the meaning of Rule 903 of Regulation S, Elan will not sell or otherwise transfer the License Shares, except (i) to the Company or its Subsidiaries, (ii) pursuant to an effective registration statement which has been declared effective under the Securities Act, (iii) in an offshore transaction in accordance with Rule 904 of Regulation S or (iv) pursuant to any other available exemption from the registration requirements of the Securities Act, including Rule 144. After the expiration of such "one-year distribution compliance period," Elan will not sell or otherwise transfer the License Shares, except pursuant to registration under the Securities Act or an available exemption therefrom and, in any case, in accordance with the provisions of Regulation S and applicable state securities laws.

(v) Elan understand that the certificates representing the License Shares will, so long as appropriate, bear the legend set forth in clause (vi) of paragraph (a) of this Section 4.

(vi) Elan agrees that the Company shall be entitled to make a notation on its records and give instructions to

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any transfer agent of the Common Stock in order to implement the restrictions on transfer set forth in this Agreement.

(vii) Elan acknowledges that it believes that it has received all information it considers necessary or appropriate and has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the issuance and sale of the License Shares and the business, properties, prospects and financial condition of the Company; provided that this clause (viii) shall in no way limit or modify the representations and warranties of the Company set forth in Section 3 of this Agreement or the right of Elan to rely thereon. Elan acknowledges that it is a sophisticated investor and that an investment in the License Shares involves a high degree of risk. Elan further acknowledges that the valuation price of the License Shares set forth in clauses 10.1.1(1), (3) and (4) of the License Agreement may or may not exceed the last publicly quoted per share "asked" price of the Common Stock on any License Share Issuance Date.

(viii) Elan will be acquiring the License Shares for its own account for the purpose of investment and not (i) with a view to, or for sale in connection with, any distribution thereof or (ii) for the account or on behalf of any "U.S. person" (as such term is defined in Regulation S). Elan understands, acknowledges and agrees that it must bear the economic risk of its investment in the License Shares for an indefinite period of time and that prior to any offer or sale of such securities, the Company may require, as a condition to effecting a transfer of the License Shares, an opinion of counsel to Elan, acceptable to the Company, as to the registration or exemption therefrom under the Securities Act.

(ix) Elan was not formed specifically for the purpose of acquiring the License Shares purchased pursuant to this Agreement.

(x) Neither Elan nor any of its Affiliates has, directly or indirectly, within the past 90 days nor will such persons until the expiration of the "one-year distribution compliance period" within the meaning of Rule 903 of Regulation S commencing from the later to occur of (i) the last Additional Closing occurring on or before December 31, 1999 and (ii) the last License Share Issuance occurring on or before the expiration or termination of the

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License Agreement directly or indirectly, enter into any short selling of any equity security of the Company (including, without limitation, the Common Stock) or any hedging transaction with respect to any equity security of the Company, including, without limitation, puts, calls, or other option transactions, option writing and equity swaps, unless in compliance with the Securities Act.

(xi) The execution, delivery and performance by Elan of this Agreement and the Registration Rights Agreement and the consummation by Elan of the transactions contemplated hereby and thereby will not conflict with or constitute or result in a breach of or a default under (or an event which with notice or passage of time or both would constitute a default under) or violation of any of (i) the terms or provisions of any indenture, mortgage, deed of trust, loan agreement, note, lease, license, franchise agreement, permit, certificate, contract or other agreement or instrument to which Elan is a party, except for any such conflict, breach, default, violation or event which would not, individually or in the aggregate, have a material adverse effect on the business, assets, liabilities (contingent or otherwise), operations, condition (financial or otherwise), solvency, properties, prospects or material agreements of Elan and its subsidiaries, taken as a whole, (ii) the certificate of incorporation or bylaws of Elan or (iii) (assuming compliance with all applicable state securities or "Blue

Sky" laws and assuming the accuracy of the representations and warranties of the Company set forth in Section 3 of this Agreement) any statute, judgment, decree, order, rule or regulation applicable to Elan or any of its respective properties or assets, except for any such conflict, breach or violation which would not, individually or in the aggregate, have a material adverse effect on the business, assets, liabilities (contingent or otherwise), operations, condition (financial or otherwise), solvency, properties, prospects or material agreements of Elan and its subsidiaries, taken as a whole.

(xii) No consent, approval, authorization or order of any court or governmental agency or body or third party is required for the execution, delivery or performance of this Agreement by Elan or the consummation of the transactions contemplated hereby, except that no representation or warranty is made with respect to filings required by the HSR Act in connection with the issuance and sale of

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the License Shares pursuant to clauses 10.1.1(3) and (4) of the License Agreement.

(xiii) Except as otherwise disclosed to the Company, no person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim against or upon Elan for any commission, fee or other compensation as a finder or broker because of any act by Elan or of any agent of Elan. Elan will pay, and hold the Company harmless against, any liability, loss or expense (including without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim for any such commission, fee or other compensation.

SECTION 5. Conditions to Company's and Purchaser's Obligations at Initial Closing. The respective obligations of each of the Company and the Purchaser to consummate the purchase and sale of each of the Shares, the Initial Notes and the License Notes, in each case, pursuant to Section 1(a) of this Agreement shall be subject to the satisfaction of the following conditions at or prior to the Initial Closing Date:

(a) The sale of the Shares, the Initial Notes and the License Notes hereunder shall not be enjoined (temporarily or permanently) on the Initial Closing Date.

(b) All consents, approvals, authorizations and orders of any court or governmental agency or body, or third party required in connection with the execution and delivery of this Agreement, the Registration Rights Agreement and the License Agreement and the consummation of the transactions contemplated hereby and thereby shall have been obtained.

SECTION 6. Conditions to Purchaser's Obligations at Initial Closing. The obligation of the Purchaser to purchase the Shares, the Initial Notes and the License Notes, in each case, pursuant to Section 1(a) of this Agreement shall be subject to satisfaction or waiver of the following conditions at or prior to the Initial Closing Date:

(a) Each of the representations and warranties of the Company set forth in Section 3 hereof that are qualified by Material Adverse Effect or materiality shall be true and correct in all respects and each of the representations and warranties of the Company set forth in Section 3 hereof that are not so qualified shall be true and cor-

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rect in all material respects, in each case, on and as of the date hereof and on and as of the Initial Closing Date as if made on and as of the Initial Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date; the statements of the Company's officers made pursuant to any certificate delivered in accordance

with the provisions hereof shall be true and correct on and as of the date made; the Company shall have performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Initial Closing Date; since June 30, 1998, and except as disclosed in the Company's (i) Registration Statement on Form S-4 filed with the SEC on July 9, 1998, (ii) Form 10-Q filed with the SEC on August 14, 1998, (iii) Form 8-K filed with the SEC on August 25, 1998 and (iv) Form 8-K/A filed with the SEC on September 25, 1998 (the "Additional SEC Reports"), there shall have been no event or development, and no information shall have become known, that, individually or in the aggregate, has or would be reasonably likely to have a Material Adverse Effect.

(b) On the Initial Closing Date, the Purchaser shall have received the opinion, dated as of the Initial Closing Date and addressed to the Purchaser, of each of Brobeck, Phleger & Harrison LLP, counsel for the Company, and the General Counsel of the Company, substantially in the form attached hereto as Exhibit B1 and Exhibit B2, respectively.

(c) The Purchaser shall have received a certificate of the Company, dated the Initial Closing Date, signed on behalf of the Company by its Chief Executive Officer and its Chief Financial Officer, to the effect that:

(i) Each of the representations and warranties of the Company contained in this Agreement that are qualified by Material Adverse Effect or materiality are true and correct in all respects and the representations and warranties of the Company contained in this Agreement that are not so qualified are true and correct in all material respects, in each case, on and as of the Initial Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date, and the Company has performed all covenants and agreements and satisfied all conditions on its part to be performed or

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satisfied hereunder at or prior to the Initial Closing Date;

(ii) At the Initial Closing Date and since June 30, 1998, except as disclosed in the Additional SEC Reports, no event or development has occurred, and no information has become known, that, individually or in the aggregate, has or would be reasonably likely to have a Material Adverse Effect; and

(iii) The sale of the Shares, the Initial Notes and the License Notes hereunder has not been enjoined (temporarily or permanently).

(d) On the Initial Closing Date, the Purchaser shall have received the Eleventh Addendum to the Amended Registration Rights Agreement, dated as of June 24, 1994, by and among the Company and those entities party thereto (the "Registration Rights Agreement"), duly executed by the Company, and such agreement shall be in full force and effect and there shall exist at and as of the Initial Closing Date no condition that would constitute or result in a breach of or a default under (or an event which with notice or passage of time or both would constitute a default under) the Registration Rights Agreement.

(e) On or prior to the Initial Closing Date, the Purchaser shall have received a true and correct copy of the Rights Agreement, as amended through the Initial Closing Date.

(f) On the Initial Closing Date, the Company shall have delivered to the Purchaser a duly executed copy of the Development, License and Supply Agreement, dated as of the Initial Closing Date, by and between the Company and Elan (the "License Agreement"); the License Agreement shall be in full force and effect and there shall exist at and as of the Initial Closing Date no condition that would constitute or result in a breach of or a default under (or an event which with notice or passage of time or both would constitute a default under) the License Agreement by the Company.

All such documents, certificates, schedules or instruments delivered pursuant to this Agreement will comply with the provisions hereof only if they are reasonably satisfactory in all material respects to the Purchaser and

SECTION 7. Conditions to Company's Obligations at Initial Closing. The obligation of the Company to issue and sell the Shares, the Initial Notes and the License Notes, in each case, pursuant to Section 1(a) of this Agreement shall be subject to satisfaction or waiver of the following conditions at or prior to the Initial Closing Date:

(a) Each of the representations and warranties of each of the Purchaser and Elan set forth in Section 4 hereof that are qualified by materiality shall be true and correct in all respects and each of the representations and warranties of each of the Purchaser and Elan set forth in Section 4 hereof that are not so qualified shall be true and correct in all material respects, in each case, on and as of the date hereof and on and as of the Initial Closing Date as if made on and as of the Initial Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date; the statements of each of the Purchaser's and Elan's officers made pursuant to any certificate delivered in accordance with the provisions hereof shall be true and correct on and as of the date made; each of the Purchaser and Elan shall have performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Initial Closing Date.

(b) The Company shall have received a certificate of the Purchaser, dated the Initial Closing Date, signed on behalf of the Purchaser by its President and Chief Financial Officer, to the effect that the representations and warranties of the Purchaser contained in this Agreement that are qualified by materiality are true and correct in all respects and the representations and warranties of the Purchaser contained in this Agreement that are not so qualified are true and correct in all material respects, in each case, on and as of the Initial Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date, and the Purchaser has performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Initial Closing Date.

(c) The sale of the Shares and the Initial Notes hereunder has not been enjoined (temporarily or permanently).

(d) The Purchaser shall have delivered the Share Purchase Price, the Initial Note Issue Price and the Li-

cense Note Issue Price in accordance with Section 2(a) hereof.

(e) On the Initial Closing Date, Elan shall have delivered to the Company a duly executed copy of the License Agreement; the License Agreement shall be in full force and effect and there shall exist at and as of the Initial Closing Date no condition that would constitute or result in a breach of or a default under (or an event which with notice or passage of time or both would constitute a default under) the License Agreement by Elan.

All such documents, certificates, schedules or instruments delivered pursuant to this Agreement will comply with the provisions hereof only if they are reasonably satisfactory in all material respects to the Company and counsel for the Company.

SECTION 8. Conditions to Purchaser's Obligations at Additional Closings.

(a) The obligation of the Purchaser to purchase Additional Notes pursuant to Section 1(b) of this Agreement, the gross proceeds of which are to be used by the Company to make the Seragen Payments or the Marathon Payment, as set forth in the Purchase Request applicable thereto, shall be subject to satisfaction or

waiver of the following conditions at or prior to the Additional Closing Date applicable thereto:

(i) Each of the representations and warranties of the Company set forth in Section 3 hereof that are qualified by Material Adverse Effect or materiality shall be true and correct in all respects and each of the representations and warranties of the Company set forth in Section 3 hereof that are not so qualified shall be true and correct in all material respects, in each case, on and as of such Additional Closing Date as if made on and as of such Additional Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date; the statements of the Company's officers made pursuant to any certificate delivered in accordance with the provisions hereof shall be true and correct on and as of the date made; the Company shall have performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Additional Closing Date; since June 30, 1998 and except as disclosed in Additional SEC Reports, there shall have been no event or development, and no informa-

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tion shall have become known, that, individually or in the aggregate, has or would be reasonably likely to have a Material Adverse Effect.

(ii) On such Additional Closing Date, the Purchaser shall have received the opinion, dated as of such Additional Closing Date and addressed to the Purchaser, of each of Brobeck, Phleger & Harrison LLP, counsel for the Company (or such other counsel as is reasonably acceptable to the Purchaser), and the General Counsel of the Company substantially in the form attached hereto as Exhibit C1 and Exhibit C2, respectively.

(iii) The Purchaser shall have received a certificate of the Company, dated such Additional Closing Date, signed on behalf of the Company by its Chief Executive Officer and its Chief Financial Officer, to the effect that:

(1) The representations and warranties of the Company contained in this Agreement that are qualified by Material Adverse Effect or materiality are true and correct in all respects and the representations and warranties of the Company contained in this Agreement that are not so qualified are true and correct in all material respects, in each case, on and as of such Additional Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date, and the Company has performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Additional Closing Date;

(2) At such Additional Closing Date and since June 30, 1998, except as set forth in the Additional SEC Reports, no event or development has occurred, and no information has become known, that, individually or in the aggregate, has or would be reasonably likely to have a Material Adverse Effect;

(3) The sale of such Additional Notes hereunder has not been enjoined (temporarily or permanently); and

(4) Each of this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, the License Agreement (to the extent not previously terminated by mutual

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agreement of the parties thereto) and, to the extent outstanding, the Securities, are, and after giving effect to the issuance and sale of such Additional Notes, will be, valid and enforceable against the Company, except that (A) the enforcement hereof and thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors'

rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought and (B) any rights to indemnity or contribution under the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, may be limited by federal and state securities laws and public policy considerations, and no event that constitutes a material breach of or a material default under (or an event which, with notice or passage of time or both would constitute a material default under) this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, the License Agreement (to the extent not previously terminated by mutual agreement of the parties thereto) or, to the extent outstanding, the Securities, by the Company has occurred and is continuing or, after giving effect to the issuance and sale of such Additional Notes, will have occurred and be continuing.

(iv) Both before and after giving effect to the issuance and sale of such Additional Notes, each of this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, the License Agreement (to the extent not previously terminated by mutual agreement of the parties thereto) and, to the extent outstanding, the Securities, shall be valid and enforceable against the Company, except that (A) the enforcement hereof and thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought and (B) any rights to indemnity or contribution under the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, may be limited by federal and state securities laws and public policy considerations, and no event that constitutes a material breach of or a material default under (or an event which, with notice or passage of

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time or both would constitute a material default under) this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, the License Agreement (to the extent not previously terminated by mutual agreement of the parties thereto) or, to the extent outstanding, the Securities, by the Company shall have occurred and be continuing.

(v) The Company shall have delivered to the Purchaser a Purchase Request relating to such Additional Notes in accordance with Section 1(b) of this Agreement.

(vi) The Purchaser shall have completed a confirmatory due diligence investigation relating to Seragen or Marathon, as the case may be (including confirmatory legal, accounting and business due diligence), and shall be satisfied, in its reasonable judgment, with the results thereof.

(vii) All consents, approvals, authorizations and orders of any court or governmental agency or body, or third party required in connection with the issuance and sale of such Additional Notes shall have been obtained, except for any filings required by the HSR Act upon conversion of such Additional Notes.

(viii) The issuance and sale of such Additional Notes hereunder shall not be enjoined (temporarily or permanently) on the Additional Closing Date applicable thereto.

(b) The obligation of the Purchaser to purchase Additional Notes pursuant to Section 1(b) of this Agreement the gross proceeds of which are to be used by the Company for any purpose other than to make the Seragen Payments or the Marathon Payment, as set forth in the Purchase Request applicable thereto, shall be subject to the prior written consent of the Purchaser, which consent may be withheld in the Purchaser's sole discretion whether or not the conditions set forth in paragraph (a) of this Section 8 have been satisfied or previously waived.

All such documents, certificates, schedules, notices and instruments

delivered pursuant to this Agreement will comply with the provisions hereof only if they are reasonably satisfactory in all material respects to the Purchaser and counsel for the Purchaser.

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SECTION 9. Conditions to the Company's Obligations at Additional Closings. The obligation of the Company to issue Additional Notes pursuant to Section 1(b) of this Agreement shall be subject to satisfaction or waiver of the following conditions at or prior to the Additional Closing Date applicable thereto:

(a) Each of the representations and warranties of the Purchaser set forth in Section 4(a) hereof that are qualified by materiality shall be true and correct in all respects and each of the representations and warranties of the Purchaser set forth in Section 4(a) hereof that are not so qualified shall be true and correct in all material respects, in each case, on and as of such Additional Closing Date as if made on and as of such Additional Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date; the statements of the Purchaser's officers made pursuant to any certificate delivered in accordance with the provisions hereof shall be true and correct on and as of the date made; the Purchaser shall have performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Additional Closing Date.

(b) The Company shall have received a certificate of the Purchaser, dated the Initial Closing Date, signed on behalf of the Purchaser by its President and Chief Financial Officer, to the effect that:

(i) the representation and warranties of the Purchaser contained in this Agreement that are qualified by materiality are true and correct in all respects and the representations and warranties of the Purchaser contained in this Agreement that are not so qualified are true and correct in all material respects, in each case, on and as of such Additional Closing Date, except to the extent that such representations and warranties expressly relate to an earlier date, and the Purchaser has performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Additional Closing Date; and

(ii) each of this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, and the License Agreement (to the extent not previously terminated by mu-

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tual agreement of the parties thereto) are valid and enforceable against the Purchaser and Elan, to the extent a party thereto, except that (A) the enforcement hereof and thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought and (B) any rights to indemnity or contribution under the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, may be limited by federal and state securities laws and public policy considerations, and no event that constitutes a material breach of or a material default under (or an event which, with notice or passage of time or both would constitute a material default under) this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, or the License Agreement (to the extent not previously terminated by mutual agreement of the parties thereto) by the Purchaser or Elan, to the extent a party thereto, has occurred and is continuing.

(c) All consents, approvals, authorizations and orders of any court or governmental agency or body, or third party required in connection with the

issuance and sale of such Additional Notes shall have been obtained, except for any filings required by the HSR Act upon conversion of such Additional Notes.

(d) The sale of such Additional Notes hereunder has not been enjoined (temporarily or permanently).

(e) The Purchaser shall have delivered the Additional Note Issue Price in accordance with Section 2(a) hereof.

All such documents, certificates, schedule, notices and instruments delivered pursuant to this Agreement will comply with the provisions hereof only if they are reasonably satisfactory in all material respects to the Company and counsel for the Company.

SECTION 10. Conditions to Elan's Obligations at License Share Issuances. The obligation of Elan to accept the issuance of License Shares in lieu of cash payments pursuant to

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and in accordance with the terms of clauses 10.1.1(1), (3) and (4) of the License Agreement shall be subject to satisfaction or waiver of the following conditions at or prior to each License Share Issuance Date applicable thereto (provided that, nothing in this Agreement shall relieve the Company from its obligation to make cash payments to Elan pursuant to clauses 10.1.1(1), 10.1(3) and (4) of the License Agreement in the event that any of the following conditions is not so satisfied or waived at or prior to such License Share Issuance Date):

(a) Each of the representations and warranties of the Company set forth in Section 3 hereof that are qualified by Material Adverse Effect or materiality shall be true and correct in all respects and each of the representations and warranties of the Company set forth in Section 3 hereof that are not so qualified shall be true and correct in all material respects, in each case, on and as of such License Share Issuance Date as if made on and as of such License Share Issuance Date, except to the extent that such representations and warranties expressly relate to an earlier date; the statements of the Company's officers made pursuant to any certificate delivered in accordance with the provisions hereof shall be true and correct on and as of the date made; the Company shall have performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such License Share Issuance Date; since June 30, 1998 and except as disclosed in the Additional SEC Reports, there shall have been no event or development, and no information shall have become known, that, individually or in the aggregate, has or would be reasonably likely to have a Material Adverse Effect.

(b) On such License Share Issuance Date, Elan shall have received the opinion, dated as of such License Share Issuance Date and addressed to the Purchaser, of each of Brobeck, Phleger & Harrison LLP, counsel for the Company (or such other counsel as is reasonably satisfactory to Elan), and the General Counsel of the Company substantially in the form attached hereto as Exhibits D1 and D2, respectively; provided that, in the case of License Shares to be issued to Elan pursuant to clause 10.1.1(1) of the License Agreement, such opinions shall be substantially in the form attached hereto as Exhibits D3 and D4, respectively.

(c) Elan shall have received a certificate of the Company, dated such License Share Issuance Date, signed on

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behalf of the Company by its Chief Executive Officer and its Chief Financial Officer, to the effect that:

(i) The representations and warranties of the Company contained

in this Agreement that are qualified by Material Adverse Effect or materiality are true and correct in all respects and the representations and warranties of the Company contained in this Agreement that are not so qualified are true and correct in all material respects, in each case, on and as of such License Share Issuance Date, except to the extent that such representations and warranties expressly relate to an earlier date, and the Company has performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such License Share Issuance Date;

(ii) At such License Share Issuance Date and since June 30, 1998, except as set forth in the Additional SEC Reports, no event or development has occurred, and no information has become known, that, individually or in the aggregate, has or would be reasonably likely to have a Material Adverse Effect;

(iii) The issuance of such License Shares has not been enjoined (temporarily or permanently); and

(iv) Each of this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, the License Agreement and, to the extent outstanding, the Securities, are, and after giving effect to the issuance of such License Shares, will be, valid and enforceable against the Company, except that (A) the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought and (B) any rights to indemnity or contribution under the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, may be limited by federal and state securities laws and public policy considerations, and no event that constitutes a breach of or a default under (or an event which, with notice or passage of time or both would constitute a default un-

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der) this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, the License Agreement or, to the extent outstanding, the Securities, by the Company has occurred and is continuing or, after giving effect to the issuance and sale of such License Shares, will have occurred and be continuing.

(d) Both before and after giving effect to the issuance of such License Shares, each of this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, the License Agreement and, to the extent outstanding, the Securities, shall be valid and enforceable against the Company, except that (A) the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought and (B) any rights to indemnity or contribution under the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, may be limited by federal and state securities laws and public policy considerations, and no event that constitutes a breach of or a default under (or an event which, with notice or passage of time or both would constitute a default under) this Agreement, the Registration Rights Agreement or the New Registration Rights Agreement, as the case may be, the License Agreement or, to the extent outstanding, the Securities, by the Company shall have occurred and be continuing.

(e) All consents, approvals, authorizations and orders of any court or governmental agency or body, or third party required in connection with the issuance of such License Shares shall have been obtained.

(f) The issuance of such License Shares shall not be enjoined (temporarily or permanently) on the License Share Issuance Date applicable

thereto.

All such documents, certificates, schedules, notices and instruments delivered pursuant to this Agreement will comply with the provisions hereof only if they are reasonably satisfactory in all material respects to the Purchaser and counsel for the Purchaser.

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SECTION 11. Conditions to the Company's Obligations at License Share Issuances. The obligation of the Company to issue License Shares in lieu of cash payments (after the Company, at its option, has elected to issue License Shares) pursuant to clauses 10.1.1(1), 10.1(3) and (4) of the License Agreement, shall be subject to satisfaction or waiver of the following conditions at or prior to the License Share Issuance Date applicable thereto; provided that, nothing in this Agreement shall relieve the Company from its obligation to make cash payments to Elan pursuant to clauses 10.1.1(1), 10.1(3) and (4) of the License Agreement in the event that any of the following conditions is not so satisfied or waived at or prior to such License Share Issuance Date; provided, further, that, in the event that Elan is unable to satisfy the following conditions or such conditions have not been waived prior to such License Share Issuance Date, the Company and Elan shall negotiate in good faith to agree, on or prior to such License Share Issuance Date, upon customary terms and conditions which will enable the Company to issue the License Shares pursuant to a transaction exempt from the registration requirements of the Securities Act pursuant Regulation D thereunder, including the giving by Elan, to the extent possible, of representations and warranties in connection therewith, so long as such negotiation does not delay any License Share Issuance Date:

(a) Each of the representations and warranties of Elan set forth in Section 4(b) hereof that are qualified by materiality shall be true and correct in all respects and each of the representations and warranties of Elan set forth in Section 4(b) hereof that are not so qualified shall be true and correct in all material respects, in each case, on and as of such License Share Issuance Date as if made on and as of such License Share Issuance Date, except to the extent that such representations and warranties expressly relate to an earlier date; the statements of Elan's officers made pursuant to any certificate delivered in accordance with the provisions hereof shall be true and correct on and as of the date made; Elan shall have performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such Additional Closing Date.

(b) The Company shall have received a certificate of Elan, dated such License Share Issuance Date, signed on behalf of Elan by its President and Chief Financial Officer, to the effect that the representation and warranties of Elan contained in this Agreement that are qualified by materiality are true and correct in all respects and the

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representations and warranties of Elan contained in this Agreement that are not so qualified are true and correct in all material respects, in each case, on and as of such License Share Issuance Date, except to the extent that such representations and warranties expressly relate to an earlier date and Elan has performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to such License Share Issuance Date.

(c) All consents, approvals, authorizations and orders of any court or governmental agency or body, or third party required in connection with the issuance of such License Shares shall have been obtained.

(d) The issuance of such License Shares shall not be enjoined (temporarily or permanently) on the License Share Issuance Date applicable thereto.

All such documents, certificates, schedule, notices and instruments delivered pursuant to this Agreement will comply with the provisions hereof only if they are reasonably satisfactory in all material respects to the Company and counsel for the Company.

SECTION 12. Conversion Prices.

(a) The Initial Notes shall be convertible by the Purchaser in accordance with their terms into Common Stock at a conversion price of \$14.00 per share (the "Initial Note Conversion Price").

(b) The License Notes shall be convertible by the Purchaser in accordance with their terms into Common Stock at a per share conversion price equal to the sum of (i) [* * *] to the Initial Closing Date [* * *] plus (ii) the [* * *] (the "License Note Conversion Price"); provided that in no event shall the License Note Conversion Price be less than \$14.00 per share or greater than \$20.00 per share.

(c) Any Additional Note shall be convertible by the Purchaser in accordance with its terms into Common Stock at a per share conversion price equal to the sum of (i) [* * *] plus (ii) [* * *] (the "Additional Note Conversion Price"); provided that in no event shall the Additional Note Conversion Price be less than \$14.00 per share (the "Minimum Conversion Price") or greater than \$20.00 per share

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(the "Maximum Conversion Price"). Each of the Minimum Conversion Price and the Maximum Conversion Price shall be subject to adjustment from time to time in accordance with paragraph 6(i)(i), (ii), (iii), (iv) or (v) of the promissory note attached hereto as Exhibit A.

(d) For purposes of this Section 12, the "Closing Price" of the Common Stock on any trading day shall mean the last reported sales price of the Common Stock on such trading day, as reported by the Nasdaq National Market or, if the Common Stock is listed on a United States securities exchange, the closing per share sales price, regular way, on such trading day on the principal United States securities exchange on which the Common Stock is traded or, if no such sale takes place on such trading day, the average of the closing bid and asked prices on such day.

SECTION 13. Covenants of the Company.

(a) The Company agrees that, prior to the termination of all rights provided for in the Registration Rights Agreement in accordance with Section 1.17 thereof, the Company will prepare, execute and deliver to the Purchaser a registration rights agreement (the "New Registration Rights Agreement"), to be effective upon such termination, in form and substance substantially identical to the Registration Rights Agreement; provided that the New Registration Rights Agreement shall expire on the later of (i) December 31, 2003 and (ii) the date on which no Securities are outstanding.

(b) Subject to the terms and conditions specified in this paragraph (b), the Company hereby grants to the Purchaser and Elan a right to purchase up to the number of Additional Shares (as defined below) in connection with any Transaction (as defined below) undertaken by the Company.

(i) Each time the Company proposes to offer, sell or otherwise issue shares of any class of its capital stock or securities convertible into, or exercisable or exchangeable for, a class of capital stock ("Capital Stock"), in a public or private transaction (a "Transaction"), the Company shall deliver a notice in person, by air courier or by facsimile ("Notice"), to the Purchaser and Elan stating (a) the Company's bona fide intention to undertake such Transaction, (b) the number of shares of Capital Stock to be offered in the Transaction (the "Transaction Shares"), (c) the number of Additional Shares up to which the Purchaser and Elan may elect to

purchase in such Transaction (which would be added to the Transaction Shares), and (d) the price and terms, if any, upon which it proposes to offer, sell or otherwise issue Capital Stock in the Transaction.

(ii) Within 10 business days after receipt by the Purchaser and Elan of the Notice, each of the Purchaser and Elan may elect to purchase, at the price and on the terms specified in the Notice, up to the number of Additional Shares set forth in the Notice. The number of shares of Capital Stock ("Additional Shares") that the Purchaser and Elan may elect to purchase and include in the Transaction shall be calculated as follows:

$$\text{Additional Shares} = \frac{\text{Transaction Shares} - \text{Transaction Shares}}{1 - X\%}$$

X% represents the percentage (stated as a decimal) of the outstanding shares of Common Stock then held by the Purchaser or Elan, as the case may be, (assuming the conversion of all Securities then held by the Purchaser or Elan, as the case may be, and the conversion, exercise or exchange of all Capital Stock then held by the Purchaser or Elan, as the case may be, and acquired pursuant to this paragraph (b)).

In the event that the price or terms upon which the Company proposes to offer, sell or otherwise issue Capital Stock in the Transaction or the number of Transaction Shares to be included in such Transaction changes for any reason (other than including the Additional Shares) after the Notice is delivered to the Purchaser and Elan, the number of Additional Shares shall, with respect to a change in the number of Transaction Shares, be recalculated using the new number of Transaction Shares and, in any case, the Company shall promptly provide a revised Notice to the Purchaser and Elan reflecting such recalculated Additional Shares and any change to such price or terms. If the Company proposes to offer, sell or issue any Capital Stock for consideration other than cash, each of the Purchaser and Elan may exercise the right set forth in this paragraph (b) and purchase Additional Shares for cash at a per share purchase price equal to (i)(a) the face amount of any cash received for such Capital Stock plus (b) the fair market value of the non-cash consideration expressly received for such Capital Stock divided by (ii) the number of Transaction Shares issued in such Transaction (excluding any Additional Shares). The fair

market value of any such non-cash consideration shall be determined by an independent appraisal firm of nationally-recognized standing chosen jointly by the Company and the Purchaser and Elan.

(iii) The rights of the Purchaser set forth in this paragraph (b) shall not be applicable to (a) the issuance or sale of Capital Stock under any plan, agreement or arrangement applicable only to employees, directors or consultants and approved by the Company's board of directors or (b) the issuance of securities pursuant to the conversion, exercise or exchange of convertible, exercisable or exchangeable securities.

(iv) The rights and obligations of the Purchaser and Elan under this paragraph (b) shall not be assignable, except that such rights may be assigned by the each of the Purchaser and Elan to any of its Affiliates that agrees in writing to be bound by the provisions of this paragraph (b).

(v) Notwithstanding anything to the contrary in this paragraph (b), the provisions of this paragraph (b) shall terminate and be of no further force and effect upon the consummation of (x) any consolidation of the Company with, or merger of the Company with or into, any person (including any individual, partnership, joint venture, corporation, trust or group thereof) ("Person") other than a consolidation or merger pursuant to which the stockholders of the Company immediately prior to such consolidation or merger own more than 50% of the outstanding securities entitled, under general circumstances, to vote in the election of directors of the surviving Person after such consolidation or merger or (y) any sale, transfer or conveyance of all or substantially all of the assets of the

Company.

(c) Upon the later of (i) the termination of all rights provided for in the Registration Rights Agreement in accordance with Section 1.17 thereof and (ii) the expiration of the New Registration Rights Agreement, and so long as any of the Purchaser, Elan or any of their Affiliates continues to hold any Securities or any Shares, Conversion Shares, License Shares or shares of Common Stock or other Capital Stock issued pursuant to paragraph (b) of this Section 13, in order to permit each of the Purchaser, Elan and their Affiliates to sell such securities (subject to Section 14(a) hereof), from time to time, pursuant to Rule 144, or any successor to such rule or

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any other rule or regulation of the SEC that may at any time permit the Purchaser to sell the Shares without registration, the Company shall:

(i) make and keep public information available, as those terms are understood and defined in Rule 144, at all times during which the Company is subject to the reporting requirements of the Securities Act or the Exchange Act;

(ii) use its best efforts to file with the SEC in a timely manner all reports and other documents required to be filed by the Company under the Securities Act or the Exchange Act (at all times during which it is subject to such reporting requirements thereof); and

(iii) (x) furnish to the Purchaser and Elan promptly upon request, a written statement by the Company as to its compliance with the reporting requirements of the Securities Act and the Exchange Act (at any time during which it is subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents of the Company and other information in the possession of or reasonably obtainable by the Company as the Purchaser or Elan may reasonably request in availing itself of Rule 144, or any successor to such rule or any other rule or regulation of the SEC that may at any time permit the Purchaser or Elan to sell such securities without registration and (y) take any action (including cooperating with the Purchaser and Elan to cause the transfer agent for the Common Stock to remove any restrictive legend on the certificates evidencing such Common Stock) as shall be reasonably requested by the Purchaser and Elan or which shall otherwise facilitate the sale of such securities from time to time by the Purchaser and Elan pursuant to Rule 144, or any successor to such rule or any other rule or regulation of the SEC that may at any time permit the Purchaser or Elan to sell such securities without registration.

(d) At such time as Elan acquires beneficial ownership (as defined under Rule 13d-3 under the Exchange Act) of not less than 15.0% of the outstanding Common Stock (assuming, for such purpose, the conversion of all Securities held by Elan and its Affiliates and the conversion, exercise or exchange of all Capital Stock held by Elan and its Affiliates and acquired pursuant to Section 13(b) hereof, in each case, regardless of the date on which such Securities or Capital Stock become convertible, exercisable or exchangeable) (the "Beneficial Owner-

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ship Threshold"), Elan shall be entitled to designate one member of the Company's Board of Directors (the "Elan Designee"); provided that, in the event that Mr. John Groom is a member of the Board of Directors of the Company at such time as Elan's ownership of Common Stock exceeds the Beneficial Ownership Threshold (as determined pursuant to this paragraph (d)), Mr. Groom shall be the Elan Designee. Within five business days following such designation, the Company shall cause the Elan Designee, if not then a member of the Company's Board of Directors, to be appointed to the Company's Board of Directors. Thereafter, so long as Elan's ownership of Common Stock, as determined pursuant to the immediately preceding sentence, exceeds the Beneficial Ownership Threshold, a committee of the Company's Board of Directors (or, if no such committee exists and the full Board of Directors of the Company performs such function, the full

Board of Directors) shall include the Elan Designee in the slate of nominees recommended by the Company's Board of Directors to stockholders for election as a director at each annual meeting of stockholders of the Company. If, as a result of death, disability, retirement, resignation or removal (with or without cause) of the Elan Designee, Elan shall be entitled to designate a replacement director to fill the vacancy created by such death, disability, retirement, resignation or removal and, within five business days following such designation, the Company shall cause such Elan Designee to be appointed to the Company's Board of Directors.

(e) Upon the request of the Purchaser, the Company agrees that, with respect to the issuance and sale of Additional Notes by the Company on Additional Closing Dates, it will cooperate with the Purchaser in good faith to make such changes to the form of the Additional Notes (including to bifurcate any Additional Notes into two or more separate securities) in order to minimize, to the greatest extent possible, any withholding or deduction for future Taxes which might be required in connection with payments made by the Company under or with respect to the Securities (including the issuance of Common Stock upon conversion of the Securities), so long as any such change does not materially adversely affect the Company or delay any Additional Closing Date.

(f) In the event that the Company exercises its option to issue License Shares on any License Share Issuance Date pursuant to either of clauses 10.1.1(3) or (4) of the License Agreement and the issuance of such License Shares to Elan or its Affiliates would require a filing by the Company under the HSR Act, the Company shall, as soon as practicable prior to such License Share Issuance Date and, in any event, use all

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commercially reasonable efforts to prepare and file or cause to be filed such required filing on a timely basis in order that the waiting period under the HSR Act shall expire on or before such License Share Issuance Date.

Elan is intended to be a third-party beneficiary of the covenants set forth in this Section 13.

SECTION 14. Covenants of Elan.

(a) Elan agrees that, until the [* * *] of the Initial Closing Date, it shall not, and shall not permit any of its Affiliates to, directly or indirectly, without the prior written consent of the Company, sell, offer to sell, contract to sell, grant any option to purchase or otherwise transfer or dispose of ("Transfer"), the Shares, the Conversion Shares, the License Shares or the Securities; provided that Elan may Transfer the Shares, the Conversion Shares, the License Shares and the Securities to any of its Affiliates and any Affiliate of Elan may Transfer the Shares, the Conversion Shares, the License Shares and the Securities to Elan or to any other Affiliate of Elan, subject to Elan's agreements set forth in Section 4(b) hereof.

For purposes of this Agreement, except as otherwise expressly provided herein, the term "Affiliate" shall mean, with respect to any specified person or entity, any other person or entity controlling, controlled by, or under common control with such specified person or entity. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative of the foregoing.

(b) Except for Transfers between or among Elan and its Affiliates, as permitted by Section 14(a) hereof, Elan agrees that if, at any time after the date hereof, it or any of its Affiliates (each, an "Offeror") shall desire to Transfer all or any part of the Securities owned by it for cash, the Offeror shall first submit to the Company a notice (the "Notice") which shall set forth a reasonably detailed description of the price and the terms of the proposed Transfer and shall contain an irrevocable offer to the Company to sell to the Company all, but not less than all, of the Securities to be Transferred at such price and on such terms. At any time within 10 days after the Notice is given, the Company may accept the offer made to

it in the Notice by furnishing written notice to the Offeror and may purchase not less than all of the Securities offered at the price and upon the terms specified in the Notice by delivering such price to the Offeror, by wire transfer in immediately available funds to an account designated in the Notice, against delivery of the promissory note or notes evidencing such Securities. If, at the end of such 10-day period, the offer contained in the Notice has not been accepted with respect to all Securities proposed to be Transferred, the Offeror shall have 60 days in which to Transfer all such Securities to a third party, at a price not less than [* * *] of the price, and on terms not materially different from the terms, in each case, set forth in the Notice. If, at the end of such 60-day period, the Offeror has not completed such Transfer, all restrictions on Transfer of such Securities set forth in this Section 14(b) shall again be in effect.

(c) Except as otherwise set forth in this paragraph (c), Elan agrees that, until the [* * *] of the Initial Closing Date, it shall not, and shall not permit any of its Affiliates to, without the consent of the Company:

(i) acquire, offer to acquire, or agree to acquire, directly or indirectly, by purchase or otherwise, beneficial ownership (as defined under Rule 13d-3 under the Exchange Act) of any Common Stock, any securities which at such time are convertible or exchangeable into or exercisable for shares of Common Stock, or any direct or indirect rights to acquire any Common Stock or any securities which at such time are convertible or exchangeable into or exercisable for shares for Common Stock, if, after giving effect to any such acquisition, Elan would be the beneficial owner (as defined under Rule 13d-3 under the Exchange Act) of more than 25.0% of the outstanding Common Stock, on a fully diluted basis;

(ii) make, or in any way participate, directly or indirectly, in any "solicitation" of "proxies" to vote (as such terms are used in the rules of the SEC) or seek to advise or influence any person or entity with respect to the voting of any Voting Stock of the Company;

(iii) make any public announcement with respect to, or submit a proposal for, or offer of (with or without conditions) any extraordinary transaction involving the Company or any of its securities or assets;

(iv) form, join or in any way participate in a Group (as defined below) in connection with any of the foregoing;

(v) take any action that could reasonably be expected to require the Company to make a public announcement regarding the possibility of any of the events described in clauses (i) and (ii) above; or

(vi) request that the Company, directly or indirectly, amend or waive any provision of this paragraph (c).

Notwithstanding the foregoing, this paragraph (c) shall in no way limit or otherwise restrict or impair the ability of Elan and its Affiliates to convert the Securities in accordance with their terms. This provision shall terminate and be of no further force and effect upon the acquisition of, or public announcement of an intent to acquire, beneficial ownership (as defined under Rule 13d-3 under the Exchange Act) by any person or group of related persons for purposes of Section 13(d) of the Exchange Act ("Group") of more than [* * *]% of the outstanding Common Stock. For purposes of clause (i) of this paragraph (c), any securities of the Company beneficially owned (as defined under Rule 13d-3 under the Exchange Act) by Elan or any of its Affiliates and acquired pursuant to this Agreement, the License Agreement or upon conversion of the Securities, or which are beneficially owned (as defined under Rule 13d-3 under the Exchange Act) by Elan or any of its Affiliates as a result of their ownership of the Securities, shall not be counted unless Elan or any of its Affiliates shall beneficially own (as defined under 13d-3 under the Exchange Act) any other securities of the Company that are acquired other than pursuant to this

Agreement, the Stock Purchase Agreement, the License Agreement or the Securities. Notwithstanding this paragraph (c), at any time on or after [* * *] of the Initial Closing Date, Elan and its Affiliates may communicate with a committee of the Company's then independent directors regarding a negotiated acquisition of all, but not less than all, of the Common Stock then outstanding. Such committee of independent directors may, in its sole discretion, refuse any proposal from Elan or its Affiliates regarding a negotiated acquisition. Upon such refusal, Elan and its Affiliates shall continue to be subject to the limitations set forth in this paragraph (c) until [* * *] of the Initial Closing Date. For purposes of this paragraph (c), "independent directors" shall mean those directors of the Company who are

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not directors, officers or Affiliates of Elan or its Affiliates.

(d) Elan agrees that, within 10 days following a Change of Control of Elan occurring prior to [* * *], Elan will notify the Company in writing of such Change of Control (the "Elan Change of Control Notice") and the Company may, at its option, not later than the 10th day following receipt of such Elan Change of Control Notice (the "Purchase Election Date"), notify Elan of the Company's irrevocable election to purchase, no earlier than 10 days and no later than 20 days following such election, all, but not less than all, of the Shares, the Conversion Shares, the License Shares and the shares of Common Stock (the "Initial Shares") purchased by the Purchaser pursuant to the Stock Purchase Agreement, dated as of September 30, 1998, by and between the Company and the Purchaser (the "Stock Purchase Agreement"), in each case, owned by Elan and its Affiliates on the date of such Change of Control, at a per share purchase price equal to the greater of [* * *]; provided, however, that, as a condition to such repurchase, the Company shall repurchase all, but not less than all, of the Securities then owned by Elan and its Affiliates pursuant to the terms of such Securities. Elan agrees that it will not, and will cause its Affiliates not to, convert any Security after the date of the Change of Control of Elan and prior to the later of (x) the receipt of a notice from the Company of its election to purchase and (y) the Purchase Election Date.

For purposes of this paragraph (d), a "Change of Control" of Elan shall be deemed to have occurred at such time as (i) any other person or Group becomes the beneficial owner (as defined under Rule 13d-3 under the Exchange Act), directly or indirectly, of 50.0% or more of the total Voting Stock (as defined below) of Elan, (ii) there shall be consummated any consolidation or merger of Elan in which Elan is not the continuing or surviving corporation or pursuant to which the Voting Stock of Elan would be converted into cash, securities or other property, other than a merger or consolidation of Elan in which the holders of the Voting Stock of Elan outstanding immediately prior to the consolidation or merger hold, directly or indirectly, at least a majority of all Voting Stock of the continuing or surviving corporation immediately after such consolidation or merger or (iii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Elan (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of Elan has been approved by a majority of the directors then still in office

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who either were directors at the beginning of such period or whose election or recommendation for election was previously so approved) cease to constitute a majority of the Board of Directors of Elan. The term "Voting Stock" means stock of any class or classes, however designated, having general voting power under ordinary circumstances to elect a majority of the board of directors, managers or trustees of Elan, other than stock having such powers only by reason of the occurrence of a contingency.

(e) In the event that the Company exercises its option to issue License Shares on any License Share Issuance Date pursuant to either of clauses 10.1.1(3) or (4) of the License Agreement and the issuance of such License Shares to Elan or its Affiliates would require a filing by Elan under the HSR Act, Elan shall use all commercially reasonable efforts to prepare and file or cause to be filed such required filing on a timely basis in order that the

waiting period under the HSR Act shall expire on or before such License Share Issuance Date. Subject to compliance by the Company with the provisions of Section 13(f) hereof, Elan agrees that any License Share Issuance Date may be postponed until the expiration or, if earlier, the termination of the waiting period under HSR Act applicable to the filing thereunder made by Elan and, if required, the Company.

SECTION 15. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally or sent by nationally recognized overnight delivery service or facsimile (receipt confirmed) addressed as follows or to such other address of which the parties may have given written notice:

(i) if to the Company, to:

Ligand Pharmaceuticals Incorporated
10275 Science Center Drive
San Diego, California 92121
Attn: General Counsel
Fax No.: (619) 550-1825

with a copy to:

Brobeck, Phleger & Harrison LLP
550 West C Street, Suite 1300
San Diego, California 92101-3532
Attn: Faye H. Russell, Esq.
Fax No.: (619) 234-3848

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(ii) if to the Purchaser, to:

Elan International Services, Ltd.
102 St. James Court
Flatts Smiths FL 04
Bermuda
Attn: President
Fax No.: (441) 292-2224

with a copy to:

Cahill Gordon & Reindel
80 Pine Street
New York, New York 10005
Attn: William M. Hartnett, Esq.
Fax No.: (212) 269-5420

(iii) if to Elan, to:

Elan Corporation, plc
Lincoln House
Lincoln Place
Dublin 2, Ireland
Attn: William F. Daniel
Fax No.: 353-1-709-4000

with a copy to:

Cahill Gordon & Reindel
80 Pine Street
New York, New York 10005
Attn: William M. Hartnett, Esq.
Fax No.: (212) 269-5420

(iv) (a) on the date delivered, if delivered by facsimile or personally or (b) on the day after the notice is delivered into the possession and control of a nationally recognized overnight delivery service, duly marked for delivery to the receiving party.

SECTION 16. Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns; provided that no party may assign its rights or obligations hereunder without the prior written consent of the other parties. Notwithstanding this Section 16, each of the Purchaser and Elan may assign any of its rights and obligations hereunder to any of its Affiliates, subject to its agreements set forth in Section 4 of this

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Agreement; provided, further, that the Company may assign its obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or in the event of its merger or consolidation with or into another entity, in each case, in a transaction in which the Company is not the surviving entity. Any assignment in contravention of this Section 16 shall be void. No assignment shall release the Purchaser, Elan or the Company from any obligation or liability under this Agreement unless expressly agreed to by the non-assigning parties.

SECTION 17. Entire Agreement; Amendments. This Agreement and the other writings referred to herein or delivered pursuant hereto contain the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between such parties, including, but not limited to, the Letter of Intent. This Agreement may be amended only by a written amendment executed by both parties.

SECTION 18. Severability. Any provision of this Agreement which is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

SECTION 19. Expenses. Except as otherwise expressly provided herein, the Purchaser, Elan and the Company will pay the respective fees and expenses (including, without limitation, legal and accounting fees and expenses) incurred by each of them in connection with the transactions contemplated hereby.

SECTION 20. Survival of Representations and Warranties. All representations and warranties made in this Agreement or any other instrument or document delivered in connection herewith or therewith, shall survive the execution and delivery hereof or thereof until December 31, 2001.

SECTION 21. Waiver. No failure or delay on the part of a party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any sin-

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gle or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

SECTION 22. Further Assurances. From and after the date of this Agreement, upon the reasonable request of one party hereto, the other party hereto shall execute and deliver such instruments, documents and other writings as may be necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

SECTION 23. GOVERNING LAW. THE VALIDITY AND INTERPRETATION OF THIS

AGREEMENT, AND THE TERMS AND CONDITIONS SET FORTH HEREIN SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED WHOLLY THEREIN, WITHOUT GIVING EFFECT TO ANY PROVISIONS THEREOF RELATING TO CONFLICTS OF LAW.

SECTION 24. Section Headings. The section headings are for the convenience of the parties and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.

SECTION 25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

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IN WITNESS WHEREOF, this Agreement has been duly executed under seal by the parties hereto and delivered as of the date first above written.

LIGAND PHARMACEUTICALS
INCORPORATED

By: /s/ William L. Respass

Name: William L. Respass

Title: Senior Vice President, General
Counsel Government Affairs

ELAN INTERNATIONAL SERVICES, LTD.

By: /s/ Kevin Insley

Name: Kevin Insley

Title: President and Chief
Financial Officer

For purposes of Section 1(c), 2(c),
4(b), 10, 11, 13 and 14 only:

ELAN CORPORATION, PLC

By: /s/ Liam Daniel

Name: Liam Daniel

Title: Group Vice President, Finance

EXHIBIT 2

CONFIDENTIAL TREATMENT REQUESTED

Dated November 9, 1998

ELAN CORPORATION, plc

AND

LIGAND PHARMACEUTICALS INCORPORATED

DEVELOPMENT, LICENCE AND SUPPLY AGREEMENT

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SCHEDULE 1 ELAN PATENT RIGHTS

SCHEDULE 2 SPECIFICATIONS

SCHEDULE 3 ELAN CLINICAL TRIALS

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THIS AGREEMENT is made on November 9, 1998.

BETWEEN:

- (1) ELAN CORPORATION, PLC, a company incorporated in Ireland having its registered office at Lincoln House, Lincoln Place, Dublin 2, Ireland ("ELAN") and
- (2) LIGAND PHARMACEUTICALS INCORPORATED, a company organized under the laws of Delaware, with offices at 10275 Science Center Drive, San Diego, California 92121, United States of America ("LIGAND").

RECITALS:

- A. ELAN is beneficially entitled to the use of various patents, including the ELAN PATENTS, which have been granted or are pending under the International Convention in relation to the development and production of drug specific dosage forms for pharmaceutical products and processes.
- B. ELAN is knowledgeable in the development of drug specific dosage forms and has developed a unique range of delivery systems designed to provide newer and better formulations of medicaments.
- C. LIGAND is desirous of entering into a licensing agreement with ELAN by virtue of which it will be free to have manufactured in accordance with the terms of this Agreement and to market the PRODUCT in the TERRITORY without infringing any of the ELAN INTELLECTUAL PROPERTY rights held by ELAN.
- D. ELAN is prepared to licence the ELAN PATENTS in the TERRITORY to LIGAND and ELAN is prepared to supply the PRODUCT to LIGAND.
- E. ELAN and LIGAND are desirous of entering into an agreement to give effect to the arrangements described at Recitals C and D.

NOW IT IS HEREBY AGREED AS FOLLOWS:

CLAUSE 1 - PRELIMINARY

Definitions: In this Agreement unless the context otherwise requires:

- 1.1.1 AFFILIATE shall mean any corporation or entity controlling or controlled or under common control with ELAN or LIGAND, as the case may be. For the purposes of this Agreement, "control" shall mean the direct or indirect ownership of more than 50% of the issued voting shares or other voting rights of the subject entity to elect directors, or if not meeting the preceding criteria, any entity

owned or controlled by or owning or controlling at the maximum control or ownership right permitted in the country where such entity exists.

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- 1.1.2 cGCP, cGMP, cGLP shall mean respectively current Good Clinical Practice, as defined in the Good Clinical Practice Guideline as published in 62 Federal Register 90 (May 9, 1997), and current Good Manufacturing Practice and current Good Laboratory Practice as defined in the FDCA.
- 1.1.3 CFR shall mean the US Code of Federal Regulations 21, as amended from time to time.
- 1.1.4 CLOSING PRICE shall mean, with respect to the Common Stock of LIGAND on any trading day, the last reported per share sales price on [*****] as reported by the NASDAQ National Market or, if the Common Stock is listed on a United States securities exchange, the closing per share sales price, regular way, on [*****] on the principal United States securities exchange on which the Common Stock is traded, or if no such sale takes place on [*****], the average of the closing bid and asked prices on [*****].
- 1.1.5 CMC SECTION shall mean the chemistry, manufacturing, and controls section of the NDA in the USA as defined in CFR Section 314.50 (1), as may be amended from time to time, and/or its equivalent in foreign NDAs.
- 1.1.6 COMPOUND shall mean the active drug substance morphine and its salts.
- 1.1.7 CONVERTIBLE NOTE shall mean the Zero Coupon Convertible Senior Note due 2008 of November 9 executed by Ligand Pharmaceuticals Incorporated and issued pursuant to the PURCHASE AGREEMENT.
- 1.1.8 DMF shall mean Drug Master File, as defined in the CFR Section 314.420 and/or its equivalent in the other countries of the TERRITORY.
- 1.1.9 EFFECTIVE DATE shall mean September 30, 1998.
- 1.1.10 ELAN shall mean Elan Corporation, plc and any of its AFFILIATES.
- 1.1.11 ELAN IMPROVEMENTS shall mean any improvement or enhancement to the ELAN PATENTS that is created, conceived or invented during the INITIAL PERIOD which ELAN is free to license and which are not subject to contractual obligations with any third party,.
- 1.1.12 ELAN INTELLECTUAL PROPERTY shall mean the ELAN PATENTS and/or the ELAN KNOW-HOW and shall include the improvements made by LIGAND as referred to in Clause 3.1.3 to the extent such improvements relate to the PRODUCT.
- 1.1.13 ELAN KNOW-HOW shall mean all knowledge, information, trade secrets, data and expertise relating to the PRODUCT and which is not generally known to the public, owned or licensed by ELAN as of the EFFECTIVE DATE, or developed by ELAN whether before or during the INITIAL PERIOD relating to the

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PRODUCT, and which ELAN is free to license and which is not subject to contractual obligations with any third party, whether or not covered by any patent, copyright, design patent, trademark, trade secret or other industrial or any intellectual property rights.

In the event that ELAN acquires or merges with a third party

entity, ELAN KNOW-HOW shall not include any know-how to the extent that such know-how relates to a product containing the COMPOUND which has been approved for marketing or is in development by the said third party entity. For the avoidance of doubt, the occurrence of any such acquisition or merger shall not affect the licence of the ELAN KNOW-HOW granted to LIGAND hereunder.

For the avoidance of doubt, ELAN KNOW-HOW shall exclude any know-how owned, licenced or controlled by [*****] (collectively, the "EXCLUDED KNOW-HOW").

For the avoidance of doubt, ELAN KNOW-HOW shall include any know-how relating to the PRODUCT owned, licenced or controlled by [*****], if any.

1.1.14 ELAN PATENTS shall mean all patents and patent applications listed in Schedule 1. ELAN PATENTS shall also include all continuations, continuations-in-part, divisionals, ELAN IMPROVEMENTS, and any patents issuing thereon, and re-issues or re-examinations of such patents and extensions of any patents licenced hereunder. Extensions of patents shall include extensions under the U.S. Patent Term Restoration Act.

For the avoidance of doubt, ELAN PATENTS shall exclude any patents owned, licenced or controlled by [*****] (the "EXCLUDED PATENTS").

For the avoidance of doubt, ELAN PATENTS shall include any patents relating to the PRODUCT owned, licenced or controlled by [*****], if any.

In the event that ELAN acquires or merges with a third party entity, ELAN PATENTS shall not include any patent rights of such third party entity to the extent that such patent rights relate to a product containing the COMPOUND which has been approved for marketing or is in development by the said third party entity. For the avoidance of doubt, the occurrence of any such acquisition or merger shall not affect the licence of the ELAN PATENTS granted to LIGAND hereunder.

1.1.15 ELAN TRADEMARK shall mean the trademark, Morphelan(TM).

1.1.16 ENFORCEMENT PROCEEDINGS shall mean the proceedings referred to in Clause 3.3.2.

1.1.17 EU shall mean the Member States of the European Union, as same may change from time to time in terms of Member States.

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1.1.18 EX WORKS shall have the meaning as such term is defined in the ICC Incoterms, 1990, International Rules for the Interpretation of Trade Terms, ICC Publication No. 460.

1.1.19 FDA shall mean the United States Food and Drug Administration or any other successor agency whose approval is necessary to market the PRODUCT in the United States of America and/or its foreign equivalents in any other country of the TERRITORY.

1.1.20 FFDCA shall mean the US Federal Food, Drug and Cosmetic Act, and the regulations promulgated thereunder, as may be amended from time to time.

1.1.21 FINANCE AGREEMENTS means the PURCHASE AGREEMENT and CONVERTIBLE NOTE entered into between Elan International Services, Ltd., Elan Corporation, plc and Ligand Pharmaceuticals Incorporated.

1.1.22 FULLY ALLOCATED COST shall mean, with respect to a party, the fully allocated cost which is the sum total of all production related costs for the PRODUCT including direct labour, direct materials and

supplies, variable labour, reasonable overhead and allocable administration, quality control, quality assurance and other costs; such costs to be calculated in accordance with a [*****].

- 1.1.23 INITIAL PERIOD shall mean the initial period of this Agreement, as more fully described in Clause 12.1.
- 1.1.24 IN MARKET shall mean the sale of the PRODUCT by LIGAND or by a distributor of LIGAND to an unaffiliated third party including but not limited to a wholesaler, chain store, managed care organisation, hospital, pharmacy or governmental agency.
- 1.1.25 LAUNCH STOCKS shall mean the quantities of stocks of the PRODUCT required by LIGAND in relation to the launch of the PRODUCT following NDA APPROVAL in each country of the TERRITORY, as more fully described in Clause 9.6.
- 1.1.26 LIGAND shall mean Ligand Pharmaceuticals Incorporated and any of its AFFILIATES.
- 1.1.27 NDA shall mean the New Drug Application or any other application for regulatory approval which ELAN intends to file and any supplements or amendments thereto which LIGAND may file, for the PRODUCT in the United States of America and its foreign equivalent in Canada.
- 1.1.28 NDA APPROVAL shall mean the final approval to market the PRODUCT in the United States of America and/or its foreign equivalent in Canada and in the case

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of Clause 2.2. its foreign equivalent in the applicable Member States of the EU (excluding Ireland and the United Kingdom).

- 1.1.29 NSP shall, subject to the provisions of Clause 10.3.7, mean in the case of PRODUCT sold by LIGAND or by a distributor of LIGAND, that sum determined by [*****] by LIGAND in accordance with LIGAND's standard accounting principles, expenses incurred by LIGAND under Clause 3.2.2 if, as a result thereof, a patent is granted to ELAN and a maximum deduction of [*****] to cover the following:-
- (a) customs duties or other taxes (excluding income or corporation tax), directly related to the sale of the PRODUCT which are paid by LIGAND;
 - (b) a discount from the gross sales proceeds to cover such normal costs as are incurred by LIGAND in respect of transport, shipping insurance, returns, rebates, allowances for bad debt actually taken, and discounts directly related to the sale of the PRODUCT.
- 1.1.30 PRODUCT shall mean the [*****] of the once-daily oral dosage microparticulate formulation being developed and manufactured by ELAN containing the COMPOUND as its primary active ingredient.
- 1.1.31 PROJECT TEAM shall mean the group to be established pursuant to Clause 6.
- 1.1.32 PURCHASE AGREEMENT shall mean the Securities Purchase Agreement, dated as of November 6, 1998 by and among Elan Corporation plc, Elan International Services, Ltd. and Ligand Pharmaceuticals Incorporated.
- 1.1.33 SPECIFICATIONS shall mean the specifications for the PRODUCT set by the parties for the NDA, as well as such other specifications such as additional specifications for the PRODUCT as may be agreed by the parties in writing.

1.1.34 TECHNOLOGICAL COMPETITOR shall mean [*****].

1.1.35 TERRITORY shall mean the United States of America and its territories and Canada.

1.1.36 \$ shall mean United States Dollars.

1.1.37 US or USA shall mean the United States of America.

Interpretation: In this Agreement:

1.2.1 the singular includes the plural and vice versa, the masculine includes the feminine and vice versa and references to natural persons include corporate bodies, partnerships and vice versa.

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1.2.2 any reference to a Clause or Schedule, unless otherwise specifically provided, shall be respectively to a Clause or Schedule of this Agreement.

1.2.3 the headings of this Agreement are for ease of reference only and shall not affect its construction or interpretation.

CLAUSE 2 - THE LICENCE

2.1 Licence to LIGAND:

2.1.1 Subject to the terms of this Agreement, ELAN hereby grants to LIGAND and LIGAND hereby accepts for the INITIAL PERIOD an exclusive licence (even as to ELAN) of the ELAN INTELLECTUAL PROPERTY to import, use, offer for sale and sell the PRODUCT in the TERRITORY; provided that LIGAND shall grant back to ELAN a non exclusive royalty-free license to make, use and co-promote the PRODUCT in the TERRITORY so as to enable ELAN to perform its obligations pursuant to this Agreement, to enable ELAN to exercise its rights as set forth in Clause 2.2.1, and for the avoidance of doubt to conduct further research, development and manufacturing within the TERRITORY with regard to ELAN's commercialisation of the PRODUCT outside the TERRITORY.

2.1.2 [*****] shall [*****]; provided, however, LIGAND can appoint distributors or wholesalers for the PRODUCT in any country of the TERRITORY to perform those activities which are within customary boundaries of pharmaceutical product distribution for the sole purpose of delivering the PRODUCT to retailers for final commercial sale to patients without such prior consent.

2.1.3 ELAN covenants that neither ELAN nor any of its AFFILIATES will prosecute any suit against LIGAND regarding any EXCLUDED KNOW-HOW and EXCLUDED PATENTS by reason of LIGAND exercising its rights under this Agreement. ELAN further covenants that after the EFFECTIVE DATE it will not incorporate any know-how or patented technology of any third party into the PRODUCT without the ability to licence such know-how or patented technology without LIGAND's written permission.

2.2 Co-Promotion of the PRODUCT:

ELAN

2.2.1 For the period from the EFFECTIVE DATE up until [*****] in each country of the TERRITORY, ELAN shall have [*****] to co-promote the PRODUCT in such country of the TERRITORY for [*****] on other terms to be agreed in good faith between the parties and having regard to standard industry practices in such country of the TERRITORY.

LIGAND

2.2.2 For the period from the EFFECTIVE DATE up until [*****] in each Member State of the EU (excluding Ireland and the United Kingdom), whether on an individual approval basis or through the European decentralised procedure, LIGAND shall have a [*****] to co-promote the PRODUCT in such Member State of the EU for [*****] on other terms to be agreed in good faith between the parties (including supply provisions) and having regard to standard industry practices in such Member State of the EU; provided that LIGAND has an established sales force in [*****] in such Member State.

2.3 Exercise of Co-Promotion Option

2.3.1 To exercise the option granted to ELAN in Clause 2.2.1, ELAN shall deliver written notice of exercise to LIGAND prior to the end of such option period described in Clause 2.2.1. Thereafter, the parties shall diligently attempt to reach an agreement of the terms and conditions governing the co-promotion of the PRODUCT for [*****] in the TERRITORY. If the parties are unable to reach in good faith such an agreement within [*****] of the receipt of such notice, either party may seek arbitration pursuant to Clause 2.3.3.

2.3.2 To exercise the option granted to LIGAND in Clause 2.2.2, LIGAND shall deliver written notice of exercise to ELAN prior to the end of such option period described in Clause 2.2.2, specifying which Member State or Member States in the EU LIGAND intends to co-promote the PRODUCT. Thereafter, the parties shall diligently attempt to reach an agreement of the terms and conditions governing the co-promotion of the PRODUCT for [*****] in such Member State or Member States, as the case may be. If the parties are unable to reach in good faith such an agreement within [*****] of the receipt of such notice, either party may seek arbitration pursuant to Clause 2.3.3.

2.3.3 In the event that the parties are unable to agree upon the terms for co-promotion of the PRODUCT by either party as set out at Clauses 2.2.1. and 2.2.2. above, the parties shall appoint an arbitrator who is technically knowledgeable in the pharmaceutical industry to choose either ELAN's last proposed terms or LIGAND's last proposed terms for the co-promotion on the basis of which terms he determines to be closer to standard industry practice in the relevant country or Member State, as the case may be. LIGAND and ELAN each shall be responsible for [*****] of the total costs of arbitration incurred in connection with this Clause 2.

CLAUSE 3 - INTELLECTUAL PROPERTY

3.1 Ownership of ELAN INTELLECTUAL PROPERTY:

3.1.1 ELAN shall remain the sole owner of the ELAN INTELLECTUAL PROPERTY.

3.1.2 ELAN shall be entitled to use the ELAN INTELLECTUAL PROPERTY, and all technical, clinical and other data, generated by ELAN and/or by LIGAND pursuant to this Agreement in connection with:

- (a) ELAN's commercial arrangements otherwise than in relation to the PRODUCT; and
- (b) ELAN's promotion of the PRODUCT for [*****] only in the event that ELAN exercises the option set out in Clause 2.2.1.; and

- (c) the commercialization of the PRODUCT in any countries outside of the TERRITORY or those which cease to be part of the TERRITORY; and in the TERRITORY following termination of this Agreement; and

3.1.3 In consideration for the licences granted by ELAN pursuant to this Agreement, any improvements relating to the ELAN INTELLECTUAL PROPERTY, including improvements relating to the formulation, process or manufacturing of the PRODUCT, made solely by LIGAND, its officers, servants, agents, and pursuant to the conduct of clinical trials conducted by or on behalf of LIGAND, its officers, servants, agents, during the INITIAL PERIOD shall be assigned by LIGAND to ELAN and shall form part of the ELAN INTELLECTUAL PROPERTY licenced to LIGAND pursuant to Clause 2.1.

3.2 Filing and maintenance of patents:

3.2.1 ELAN will be entitled but not obliged, at its own expense, to file and prosecute ELAN PATENTS; to determine the patent filing strategy in relation to same at its sole discretion and upon grant of any letters patent of the ELAN PATENTS, to maintain such letters patent in force.

3.2.2 Should ELAN elect not to file or not to continue the maintenance or prosecution of any case under the ELAN PATENTS in the TERRITORY, it shall at LIGAND's request and at LIGAND's expense and within the rules and regulations of the appropriate patent issuing office attempt to secure a proprietary position for LIGAND provided, however, that ELAN shall not be obliged to perform such acts in any country of the TERRITORY at LIGAND's request where to do so would violate any law (statutory or judge-made) or regulations in such country. Any such patent applications shall be made in the name of ELAN and ownership of such patent applications or patents, if granted, shall remain with ELAN and will become part of the ELAN PATENTS for the purpose of this Agreement.

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3.3 Enforcement

3.3.1 LIGAND and ELAN shall promptly inform the other in writing of any alleged infringement or unauthorised use of which it shall become aware by a third party of any intellectual property within the ELAN INTELLECTUAL PROPERTY and provide such other with any available evidence of infringement or unauthorized use.

3.3.2 ELAN, at its option, shall be entitled to institute enforcement proceedings ("ENFORCEMENT PROCEEDINGS") in respect of any infringement or unauthorised use of the ELAN INTELLECTUAL PROPERTY. LIGAND agrees to provide all reasonable co-operation and assistance to ELAN in relation to any such ENFORCEMENT PROCEEDINGS (and agrees to be named as a party if legally required) at ELAN's expense. Any reasonable fees and costs borne by LIGAND shall be reimbursed by ELAN. ELAN shall be entitled to deduct its reasonable expenses in relation to such ENFORCEMENT PROCEEDINGS (including reasonable attorney's fees and expenses) from any recovery [*****]. ELAN and LIGAND each recognise that it is in both parties interest to enforce ELAN INTELLECTUAL PROPERTY to the full amount provided by law, and neither party shall, except as required by law, knowingly make any admission to jeopardise, compromise or otherwise limit the scope of such ELAN INTELLECTUAL PROPERTY.

3.3.3 In the event that ELAN does not want to institute, or to continue already instituted, ENFORCEMENT PROCEEDINGS, then LIGAND, using attorneys of LIGAND's choosing reasonably acceptable to ELAN, can enforce such rights at its own expense. In such event, LIGAND must keep ELAN fully and timely informed of the action so as to enable ELAN to provide input which LIGAND shall reasonably consider. LIGAND [*****] relating to the invalidity, unenforceability or non-infringement of the ELAN INTELLECTUAL PROPERTY without ELAN's

prior written consent. ELAN agrees to provide all reasonable co-operation and assistance to LIGAND in relation to any such ENFORCEMENT PROCEEDINGS at LIGAND's expense and agrees to be named as a party in any ENFORCEMENT PROCEEDINGS. Any reasonable fees and costs borne by ELAN shall be reimbursed by LIGAND. In the event that LIGAND enforces ELAN INTELLECTUAL PROPERTY in accordance with this paragraph, LIGAND shall be entitled to deduct its reasonable expenses in relation to such ENFORCEMENT PROCEEDINGS (including reasonable attorney's fees and expenses and reimbursements to ELAN) from any recovery [*****].

3.4 Defence

3.4.1 In the event that a claim or proceeding is brought against LIGAND or ELAN by a third party alleging that the sale, manufacture, offer for sale or use of the PRODUCT infringes the patent rights of such a third party in the TERRITORY, LIGAND shall promptly advise ELAN of such claim or proceeding and the party

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against whom the claim or proceeding is brought and the other party shall meet to discuss in what manner such claim or proceeding should be defended. Such discussion shall include, among other things, responsibility of defense, financial undertaking, cessation of the sale of the PRODUCT and modification of the PRODUCT to avoid unauthorised use.

3.4.2 In the circumstance where (i) LIGAND or ELAN, or both LIGAND and ELAN, are sued for infringement of a patent and ELAN is in breach of its representation and warranty under Clause 14.13 and (ii) no agreement is made by ELAN and LIGAND under Clause 3.4.1 concerning a defense, then LIGAND shall defend such action at its expense. ELAN shall reasonably cooperate with LIGAND in such defense and shall bear its own expenses (including reasonable attorney fees) to the extent it participates in the action. LIGAND shall be responsible for [*****], except that neither party shall be liable for [*****] against the other for [*****] (or, in the U.S., as otherwise provided in [*****]) or for any [*****] (or, in the U.S., as otherwise provided in [*****]) to the third party against the other arising from [*****]. LIGAND must keep ELAN fully and timely informed of the action, including any offers of settlement made to or by LIGAND, so as to enable ELAN to provide input which LIGAND shall reasonably consider. LIGAND shall have the right to settle any claim against LIGAND based on such patent without ELAN's approval [*****]. LIGAND shall have [*****]. If ELAN [*****] of a settlement, then ELAN [*****] of such action [*****] as and from such date, in which case LIGAND [*****] of any award of [*****] (including the legal costs incurred by LIGAND up to the date of ELAN [*****] of the action) and shall have no obligation to contribute to [*****] (or, in the U.S., as otherwise provided in [*****]) or for [*****] (or, in the U.S., as otherwise provided in [*****]) arising from [*****]. In the case in which ELAN [*****] of an action, LIGAND's contribution to an award of [*****] ELAN shall be [*****] ELAN and (ii) [*****] LIGAND, [*****] by [*****] LIGAND; provided however, that in the event that such sum paid by LIGAND to [*****] LIGAND [*****] shall be [*****] LIGAND to ELAN. In no event, shall ELAN be obliged to make any payment to LIGAND arising from any award [*****] ELAN where ELAN has [*****] of an action pursuant to this Clause 3.4.2.

3.4.3. In the circumstance where (i) LIGAND or ELAN, or both LIGAND and ELAN, are sued for infringement of a patent and [*****] of its [*****] and (ii) no agreement is made by ELAN and LIGAND under Clause 3.4.1 concerning a defense, then LIGAND shall defend such action at its expense including the reasonable expenses of ELAN (not including ELAN's attorney fees) incurred in cooperating with LIGAND in such defense. LIGAND shall be obligated to pay

[*****] to the third party except that LIGAND shall not be obligated to pay [*****] (or, in the U.S., as otherwise provided in [*****]) or for [*****] (or, in the U.S., as otherwise provided in [*****]) to the

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third party against ELAN arising from [*****]. LIGAND must keep ELAN fully and timely informed of the action, including offers of settlement made to or by LIGAND, so as to enable ELAN to provide input which LIGAND shall reasonably consider. LIGAND shall have the right to settle any claim against LIGAND based on such patent without ELAN's approval. LIGAND shall have no right to settle a claim against ELAN without ELAN's written approval. If ELAN [*****] of a settlement, then ELAN shall [*****] of such action [*****] as and from such date, in which case [*****] to (i) [*****] by LIGAND up to the date of ELAN [*****] of the action, and (ii) [*****] and LIGAND shall have no obligation to contribute to any [*****] (or, in the U.S., as otherwise provided in [*****]) or for [*****] (or, in the U.S., as otherwise provided in [*****]) arising from [*****] by ELAN.

3.4.4 In the situation where (i) LIGAND settles an action against LIGAND and ceases distribution of the PRODUCT and (ii) ELAN [*****] of any claim against ELAN under either Clause 3.4.2 or Clause 3.4.3 and, if applicable, ELAN is selling the PRODUCT on its own behalf or through a distributor in accordance with Clause 2.2.1, then LIGAND shall have [*****] to an award of damages against ELAN for the manufacture, use or sale of the PRODUCT which is referable to the period after LIGAND and/or its distributor ceases distribution of the PRODUCT.

3.4.5 ELAN shall have no liability to LIGAND whatsoever or howsoever arising for any losses incurred by LIGAND as a result of having to cease selling the PRODUCT or having to defer the launch of selling the PRODUCT, whether as a result of a court order or otherwise

3.5 Trademarks

3.5.1 LIGAND shall be entitled to market the PRODUCT in the TERRITORY under the ELAN TRADEMARK.

3.5.2 ELAN hereby grants to LIGAND a non-exclusive royalty free license in the TERRITORY for the INITIAL PERIOD (and thereafter for as long as LIGAND continues to import, make or have made, use, offer for sale or sell the PRODUCT in the TERRITORY in accordance with the provisions of Clause 12.2) to use the ELAN TRADEMARK solely for the purposes of exercising its rights and performing its obligations under this Agreement and the following provisions shall apply as regards the use of the ELAN TRADEMARK by LIGAND:

(1) LIGAND shall ensure that each reference to and use of the ELAN TRADEMARK by LIGAND is in a manner from time to time approved by ELAN and accompanied by an acknowledgement, in a form approved by ELAN, that the same is a trademark (or registered trademark) of ELAN.

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(2) LIGAND shall not use the ELAN TRADEMARK in any way which might materially prejudice its distinctiveness or validity or the goodwill of ELAN therein.

(3) LIGAND shall not use in relation to the PRODUCT any trademarks other than the ELAN TRADEMARK without obtaining the prior consent in writing of ELAN, which consent may not be unreasonably withheld, and except that LIGAND shall have the right to employ in connection with the PRODUCT, the trademark "LIGAND" and the

tradename "Ligand Pharmaceuticals Incorporated" and such other trademarks and tradenames as required by law.

- (4) LIGAND shall not use in the TERRITORY any trademarks or trade names so resembling the ELAN TRADEMARK as to be likely to cause confusion or deception.
- (5) LIGAND shall promptly notify ELAN in writing of any alleged infringement of which it becomes aware by a third party of the ELAN TRADEMARK and provide ELAN with any applicable evidence of infringement.

3.5.3 ELAN shall, at its expense, file and prosecute applications to register and maintain registrations of the TRADEMARK in the TERRITORY.

3.5.4 ELAN will be entitled to conduct all enforcement proceedings relating to the ELAN TRADEMARK and shall at its sole discretion decide what action, if any, to take in respect of any infringement or alleged infringement of the ELAN TRADEMARK or passing-off or any other claim or counter-claim brought or threatened in respect of the use or registration of the ELAN TRADEMARK. Any such proceedings shall be conducted at ELAN's expense and for its own benefit.

In the event that ELAN fails to take action in respect of any infringement or alleged infringement of the ELAN TRADEMARK or passing-off or any other claim or counter-claim brought or threatened in respect of the use or registration of the ELAN TRADEMARK, LIGAND may require ELAN defend such action, at LIGAND's expense, when there is evidence of actual mistake, confusion, or deception. LIGAND may request ELAN to take action in respect of acts it deems likely to cause mistake, confusion or deception at LIGAND's expense. If ELAN denies LIGAND's request, LIGAND can request an independent attorney skilled in trademark law to render an opinion, at LIGAND's expense, with respect to whether such acts are likely to cause mistake, confusion or deception and if such attorney opines that such acts constitute an infringement then ELAN shall take such action at LIGAND's expense; provided however that such independent attorney shall not be retained by either party in any such subsequent action. Any amount remaining after the deduction of any reasonable expenses (including reasonable attorney fees and expenses) shall be distributed [*****] among

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the parties in which LIGAND shall receive [*****] and ELAN shall receive [*****].

3.5.5 Except as provided in this Clause 3.5, LIGAND will have no ownership rights in respect of the ELAN TRADEMARK or any trade names or trademarks used by ELAN in relation to the PRODUCT or of the goodwill associated therewith, and LIGAND hereby acknowledges that, except as expressly provided in this Agreement, it shall not acquire any rights in respect thereof and that all such rights and goodwill are, and will remain, vested in ELAN.

LIGAND shall not, at any time during or after the INITIAL PERIOD, challenge or assist others to challenge the ELAN TRADEMARK, or the registration thereof or attempt to register any trademarks, marks, or trade names confusingly similar to the ELAN TRADEMARK.

CLAUSE 4 - LIGAND COMPETING PRODUCTS

4.1 LIGAND undertakes [*****] in the TERRITORY during the INITIAL PERIOD and for [*****] thereafter.

CLAUSE 5 - DEVELOPMENT OF THE PRODUCT

5.1 ELAN shall diligently apply its technical skill and expertise, including

the ELAN PATENTS and ELAN KNOW-HOW, in the development of the PRODUCT on behalf of LIGAND. However, it is acknowledged that pharmaceutical research and development incorporates inherent risk in terms of outcomes and, save for acts of negligence or omission by ELAN, ELAN shall have no liability to LIGAND as a result of any failure or delay of the PRODUCT to obtain the NDA APPROVAL in one or more of the other countries of the TERRITORY.

- 5.2 ELAN and LIGAND hereby confirm that each shall undertake its respective part of the development of the PRODUCT as a collaborative effort and that the provisions of this Agreement requires that each party diligently carries out those tasks assigned to it. Each party shall co-operate with the other in good faith particularly with respect to unknown problems or contingencies and shall perform its obligations in good faith and in a commercially reasonable, diligent and workmanlike manner.
- 5.3 In the event that LIGAND wishes to have more than [*****] developed pursuant to this Agreement, the parties shall negotiate in good faith as to the additional costs to be paid to ELAN for such development. The parties agree that ELAN's charges to LIGAND for any such work shall be as set out in Clause 10.2 of the Agreement.
- 5.4 ELAN shall be responsible, [*****], for the completion of the clinical studies for the PRODUCT listed in Schedule 3 which are currently in progress. LIGAND shall be responsible for the cost of all development work and/or clinical trials on the PRODUCT in relation to the NDA APPROVAL and commercialisation of the PRODUCT in the TERRITORY in addition to such ongoing clinical trials but shall have no obligation to

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perform such development, work and/or clinical trials. [*****]. In the event that LIGAND decides not to incur any [*****] or [*****] on the PRODUCT, the provisions of Clause 7.4 shall be applicable. In relation to the conduct of all clinical studies other than those listed in Schedule 3, ELAN shall be entitled to charge LIGAND for all research, development and manufacturing work conducted by ELAN, including the oversight of the conduct of such clinical studies by one or more third parties, on the basis set forth in Clause 10.2.

- 5.5 For the [*****] following submission of the NDA in the USA, LIGAND shall commit to undertake additional clinical expenditure, including [*****] (including FULLY ALLOCATED COST of LIGAND and the sums paid by LIGAND to ELAN as referred to in Clause 5.4 above). The objective of the programme so conducted shall be to [*****]. LIGAND agrees to carry out and complete the clinical efficacy programme to a standard and timeframe that LIGAND would otherwise find acceptable for one of its major branded products. LIGAND shall keep ELAN informed as to the [*****]. LIGAND undertakes that it shall carry out all [*****] to prevailing cGCP and cGLP and most specifically in accordance with FDA standards and guidelines. In the event that LIGAND does not expend [*****] during the [*****] following submission of the NDA in the USA, then, unless otherwise agreed in writing between the parties, LIGAND shall pay any shortfall between the [*****] and the actual sum expended by LIGAND to ELAN, provided however, in the event the FDA notifies ELAN of its refusal to grant the NDA submitted by ELAN and LIGAND, after discussion with ELAN, determines that it is not commercially viable for LIGAND to incur any additional development expenses as provided in Clause 5.4, LIGAND shall have no further obligation to expend or remit sums under this Clause 5.5. In such event, ELAN shall have the right to terminate this Agreement. Thereafter, ELAN shall be entitled to research, develop and commercialise the PRODUCT in the TERRITORY. In the event of such termination, all monies paid to ELAN by LIGAND pursuant to this Agreement shall not be recoverable by LIGAND.
- 5.6 During the development of the PRODUCT, the parties shall review and agree on interim specifications for the PRODUCT and shall also agree on the final SPECIFICATIONS following the filing of the NDA in the United States of America, which shall at that time be attached to this Agreement as Schedule 2. The SPECIFICATIONS may thereafter be amended as agreed by the parties or as may otherwise be requested or mandated by the regulatory authorities in the TERRITORY, most specifically the FDA.

5.7 For the avoidance of doubt, the parties hereby confirm that the primary objective of the development work on the PRODUCT is to generate data required for inclusion in the NDA and secure NDA APPROVAL for the PRODUCT in the United States of America. As of the date of this Agreement, it is the parties' expectation that the body of data so generated in the development of the PRODUCT will also be used to support such applications for regulatory approval that LIGAND shall make in the other countries of the TERRITORY.

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5.8 In the event however that such expectation proves unfounded or incorrect and further data is required to obtain such other NDA APPROVAL as are pursued by LIGAND in the other countries of the TERRITORY, LIGAND shall determine the viability of proceeding further with the regulatory application and generation of the further data requirements. In the event that LIGAND elects to continue, the parties shall agree on the programme of work to be undertaken to generate such additional data and the apportioning of tasks and costs therefor. LIGAND shall reimburse ELAN for all such additional work which it requires ELAN to carry out in accordance with ELAN's charges as set out in Clause 10.2 of the Agreement.

CLAUSE 6 - PROJECT TEAM AND PROJECT MANAGEMENT

6.1 It is recognised by the parties that a significant commitment of resources shall be required from each party to accomplish successful NDA APPROVAL in the TERRITORY and launch of the PRODUCT, particularly in the co-ordination of logistics, finalisation of various specifications, preparation and agreement of clinical study designs and protocols (other than in relation to the clinical trials listed in Schedule 3), methodologies transfer, supply and packaging configurations, shipping and handling procedures etc. and for this purpose, the parties will establish a PROJECT TEAM.

6.2 The PROJECT TEAM shall consist of a chief representative from each party together with such additional business and development personnel from each party who are appropriately skilled and knowledgeable in relation to the development of the PRODUCT and who are deemed necessary to accomplish such work. The PROJECT TEAM shall have an equal number of members from each of the parties.

6.3 Unless otherwise agreed by the parties, the PROJECT TEAM shall meet at least once each calendar quarter, such meetings to continue until the time of launch or such later time as may be agreed. The PROJECT TEAM shall meet alternately at the Georgia offices of ELAN and the San Diego offices of LIGAND or as otherwise agreed by the parties. Meetings shall be co-chaired by the chief representatives of the parties. At and between meetings of the PROJECT TEAM, each party shall keep the other fully and regularly informed as to its progress with its respective obligations.

6.4 In the event of a dispute amongst the PROJECT TEAM which cannot be resolved by consensus, such dispute shall be resolved by a management committee which shall have an equal number of members from each of the parties. In the event that the dispute cannot be resolved by the management committee, the dispute shall be referred to the Vice President, Marketing of LIGAND and the Vice President, Commercial Development, Elan Pharmaceutical Technologies, a division of ELAN, who shall discuss the matter and attempt to reach an amicable solution. In the event that the foregoing officers cannot resolve the dispute amicably, the said officers shall refer the dispute to the Chairmen of LIGAND and ELAN who shall discuss the matter and attempt to reach an amicable solution. The provisions of this Clause 6.4. shall be without prejudice to the parties' other rights and remedies.

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CLAUSE 7 - REGISTRATION OF THE PRODUCT

7.1 ELAN shall be responsible for the compilation, preparation, submission and prosecution to approval of the NDA for the PRODUCT in each country of the

TERRITORY. ELAN will use its reasonable efforts in prosecuting the NDA to approval. ELAN shall thereafter maintain at its own cost the NDA and the NDA APPROVAL in each country of the TERRITORY for the INITIAL PERIOD. The NDAs shall remain the property of ELAN, provided that ELAN shall allow LIGAND access thereto to enable LIGAND to fulfill its obligations and exercise its rights hereunder, including the confidential portions of the CMC SECTION relating to the formulation and manufacturing processes.

- 7.2 At meetings of the PROJECT TEAM, ELAN shall consult with LIGAND on the preparation of the NDA. Notwithstanding the foregoing, ELAN shall at its sole discretion decide on the ultimate content of the NDA. ELAN shall notify LIGAND of the NDA APPROVAL in each country of the TERRITORY.
- 7.3 ELAN shall bear the costs and expenses of filing the NDA with the FDA in the USA provided that such costs as of the date of submission and filing of the NDA are consistent with the filing charges prevailing as of the date of this Agreement. All costs associated with maintaining the NDA APPROVAL (other than maintaining the manufacturer's licence, the costs of which shall be borne by ELAN) in each country of the TERRITORY including any post approval studies required by the FDA in respect of the PRODUCT shall be paid by ELAN. LIGAND may elect to conduct [*****] in conjunction with ELAN whether or not [*****] are mandated by the FDA provided that LIGAND shall bear [*****] in relation to commercialisation of the PRODUCT in the TERRITORY. Such costs incurred by LIGAND shall be deemed [*****] under Clause 5.5 of this Agreement.
- 7.4 If any information or clinical data are requested by the FDA in addition to the data generated from the clinical trials specified in Schedule 3 in order to obtain NDA APPROVAL in any country of the TERRITORY, LIGAND, at its option and at its own cost, may undertake to supply said information or data. If LIGAND so requests, ELAN will assist LIGAND, at LIGAND's expense, in the collection of said information or data. [*****], if incurred by LIGAND, will be deemed [*****] under Clause 5.5 of this Agreement. In the event that LIGAND decides not to generate any additional information or clinical data which is requested by the FDA to obtain NDA APPROVAL in any country of the TERRITORY, then, ELAN shall have the right to terminate the license granted to LIGAND pursuant to Clause 2.1. for any such country or countries of the TERRITORY. Thereafter, ELAN shall be entitled to research, develop and commercialise the PRODUCT in such country or countries of the TERRITORY. In the event of such termination, all monies paid to ELAN by LIGAND pursuant to this Agreement shall not be recoverable by LIGAND.
- 7.5 ELAN shall at its option file DMF(s) for the PRODUCT in its own name and shall be responsible for all interaction with FDA, and where applicable other REGULATORY AUTHORITIES, concerning the DMF.

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- 7.6 ELAN [*****] LIGAND, its agents and employees [*****] to which LIGAND, its agents and employees [*****] in connection with [*****] or failure to [*****].
- 7.7 It is hereby acknowledged that there are inherent uncertainties involved in the development and registration of pharmaceutical products with the FDA insofar as obtaining approval is concerned and such uncertainties form part of the business risk involved in undertaking the form of commercial collaboration as set forth in this Agreement. Therefore, save for using its reasonable efforts, neither party shall have any liability to the other solely as a result of any failure of the PRODUCT to successfully achieve the interim specifications or to achieve the NDA APPROVAL by the FDA.
- 7.8 LIGAND shall not conduct any technical analysis, study or test on the formulations of the PRODUCT without the prior agreement of ELAN, save for the routine quality tests required to verify conformance with the SPECIFICATIONS.

CLAUSE 8 - MARKETING AND PROMOTION OF THE PRODUCT

- 8.1 LIGAND shall control and be responsible for the content and format of the promotional campaign to be submitted to the FDA; provided that ELAN has the opportunity to review and provide input into such promotional campaign.

LIGAND shall use reasonable endeavours to obtain approval by the FDA of the promotional campaign for the PRODUCT.

- 8.2 Within [*****] after the filing of the NDA in each country of the TERRITORY, LIGAND and ELAN shall agree upon appropriate due diligence obligations on LIGAND for marketing the PRODUCT, including the promotional support budget and minimum sales figures for the [*****] following commercial launch of the PRODUCT in each country of the TERRITORY, having regard to standard industry practises. In the event that the parties are unable to agree upon such due diligence obligations for the PRODUCT within the time period as set out above, the parties shall appoint an arbitrator who is technically knowledgeable in the pharmaceutical industry to choose either ELAN's proposed terms or LIGAND's proposed terms on the basis of which terms he determines to be closer to standard industry practice in the relevant country of the Territory. LIGAND and ELAN each shall be responsible for [*****] of the costs of arbitration incurred in connection with this Clause 8.2.
- 8.3 LIGAND shall diligently pursue the commercialisation of the PRODUCT and shall use all [*****] efforts to market and promote the PRODUCT throughout the TERRITORY and in doing so, shall use the same level of effort as with other similar products of similar sales potential which it markets. LIGAND covenants that it shall not use the PRODUCT as a "loss leader" in its marketing programs and shall at all times use its reasonable efforts in marketing the PRODUCT.
- 8.4 LIGAND shall submit to ELAN for ELAN's information, copies of all promotional and other printed materials which LIGAND proposes at any time to use in relation to the sale
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- of the PRODUCT provided always that the provisions of this Clause 8.4 shall be without prejudice to the obligations and responsibilities of LIGAND under Clauses 8.1 and 14.9 and LIGAND shall indemnify and hold harmless ELAN from and against all claims, damages, losses, liabilities and expenses to which ELAN may become liable arising out of LIGAND's bad faith, gross negligence or intentional misconduct in connection with the activities described in this Clause 8.
- 8.5 To the extent permitted by law, such materials shall include due acknowledgement that the PRODUCT is developed and manufactured by ELAN.
- 8.6 LIGAND shall effect the first full scale national commercial launch of the PRODUCT in the each country of the TERRITORY within [*****] of the NDA APPROVAL in such country, provided that LIGAND shall have received the agreed quantities of LAUNCH STOCKS ordered pursuant to firm purchase orders at least [*****] in advance of the launch date. ELAN shall not unreasonably withhold its agreement to a request by LIGAND for an extension of the said [*****] period if there are legitimate commercial reasons for such an extension.
- 8.7 The parties shall meet to discuss the sales performance of the PRODUCT on a quarterly basis for the first year following the initial launch of the PRODUCT, on a semi-annual basis for the second and third years and on an annual basis thereafter. At such meetings, LIGAND shall report on the ongoing marketing and sales strategy related to the PRODUCT in the TERRITORY, including marketing approaches educational campaigns, promotional and advertising materials and campaigns, sales plans and results, performance against competitors, its objectives for the PRODUCT and its plans for the next year of the Agreement.
- 8.8 LIGAND shall mark or have marked all patent number(s) of the ELAN PATENTS on all PRODUCT or otherwise communicate to the trade the existence of the ELAN PATENTS in the countries of the TERRITORY in such a manner as to give constructive or actual notice of infringement under applicable laws.

CLAUSE 9 - SUPPLY OF THE PRODUCT

- 9.1 Save as otherwise provided in this Agreement, ELAN shall produce and supply to LIGAND its entire requirements of the PRODUCT. ELAN shall be the sole

and exclusive supplier of the PRODUCT to LIGAND in the TERRITORY and LIGAND will purchase the PRODUCT exclusively from ELAN in the TERRITORY.

9.2 As a consequence of the restrictions currently imposed upon the importation, use and distribution of the COMPOUND in and into the countries of the TERRITORY, the parties acknowledge the requirement to order the appropriate quantity of COMPOUND in sufficient time to enable the supplier of the COMPOUND to obtain the appropriate aggregate quota from the Drug Enforcement Agency in the U.S.A. or its successor agency, and its equivalent in Canada (where applicable). In this regard, the parties shall negotiate and agree upon a binding forecast for the supply of COMPOUND for the

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applicable calendar year (or part thereof) including the quantity of COMPOUND which is necessary for the manufacture of the LAUNCH STOCKS. In the event that LIGAND does not order sufficient PRODUCT to utilise the quantity of COMPOUND, LIGAND shall reimburse ELAN for the cost of the unutilised COMPOUND.

9.3 The PRODUCT to be supplied to LIGAND by ELAN shall be in [*****] complying with the SPECIFICATIONS. ELAN shall deliver the PRODUCT to LIGAND and/or any party designated by LIGAND in proper packaging so as to permit safe storage and transport. ELAN shall bear all the costs of labeling the PRODUCT so as to appropriately display the LIGAND name provided that LIGAND supplies all the appropriate graphics, designs, logos and related and appropriate artwork.

9.4 As a consequence of the restrictions currently imposed upon the importation, use and distribution of COMPOUND into the countries of the TERRITORY, the parties currently envisage that the PRODUCT shall be manufactured by ELAN or a nominated sub-contractor in the USA for supply in the USA and Canada. In the event that the relevant authorities in Canada prohibit the importation of the PRODUCT from the USA, the parties shall review alternative arrangements which can be put in place having regard to such expenditure as is justified and the commercial opportunities available in the country or countries concerned. In the event that ELAN appoints a third party manufacturer, such appointment shall be subject to the secrecy provisions of Clause 16.1 and ELAN shall be solely responsible and liable to LIGAND for the performance of the said manufacturer. ELAN shall ensure that the said manufacturer's facility is approved by and complies in all material respects with the requirements of the FDA of the country where the PRODUCT is manufactured and sold and that LIGAND has the customary rights of audit and inspection of such third party manufacturer.

9.5 Within [*****] following the signing hereof, LIGAND shall provide ELAN with a forecast of LIGAND requirements for the PRODUCT for the 18 month period following the first anticipated NDA APPROVAL in the TERRITORY. The said forecast will be updated quarterly until the first NDA APPROVAL in the TERRITORY. Except as otherwise provided herein (and specifically except as set out in Clause 9.2. regarding ordering of the COMPOUND), all forecasts made hereunder shall be made to assist ELAN in planning its production and LIGAND in planning marketing and sales. Such forecasts shall not be binding purchase orders, shall not be the basis for a binding commitment under Clause 9.2 and shall be without prejudice to LIGAND's subsequent firm purchase orders for the PRODUCT in accordance with the terms of this Agreement.

9.6 In advance of the first NDA APPROVAL in the TERRITORY and in advance of NDA APPROVAL in the USA where such approval is not the first NDA APPROVAL in the TERRITORY, the parties shall discuss and agree upon the manufacture and purchase of specific quantities of LAUNCH STOCKS; however, for the avoidance of doubt, the parties hereby confirm that ELAN's manufacturing obligations shall only arise on receipt of firm purchase orders.

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9.7 ELAN shall deliver the PRODUCT to LIGAND within [*****] of the receipt

of a firm purchase order therefor ([*****]) in the case of LAUNCH STOCKS). In any event and notwithstanding any firm purchase orders for LAUNCH STOCKS which LIGAND has already placed with ELAN, ELAN will notify LIGAND within 5 working days of ELAN's receipt of an approval letter, or a pre-approval letter in respect of a NDA from FDA. LIGAND shall within [*****] of such notification place a firm purchase order with ELAN for LAUNCH STOCKS, unless such a purchase order has already been submitted to ELAN prior to that date. In addition, LIGAND will use its reasonable efforts to provide forecasts for deliveries in addition to the LAUNCH STOCKS for the balance of the year in which the NDA APPROVAL is obtained.

9.8 Within [*****] after the first NDA APPROVAL in the TERRITORY and on or before the 23rd day of each calendar month thereafter, LIGAND shall provide a rolling 18 month-forecast for the period beginning on the first day of the relevant calendar month. The format of such 18 month-forecasts shall be comprised of a 12 month-forecast together with 2 quarterly forecasts. The first calendar quarter of such 18 month-forecast shall be a binding purchase commitment of LIGAND. In addition to the obligation of LIGAND regarding rolling 18 month-forecasts outlined herein, LIGAND shall provide ELAN with rolling 3 years' forecasts on 1st August of each year of this Agreement.

9.9 Subject to the agreement of ELAN, the 12 month forecasts (other than for LAUNCH STOCKS) may increase or decrease from one quarter to the next, provided, however, ELAN shall not be obligated to produce an amount of PRODUCT which differs by more than [*****] in terms of volume of PRODUCT ordered as compared to the preceding quarter. Notwithstanding the foregoing, ELAN will use its reasonable efforts to fulfil LIGAND's requirements in excess of forecasted amounts, but shall not be obliged to meet such requirements if it is not reasonably practicable to do so provided that ELAN shall supply the PRODUCT so ordered but not immediately available as soon thereafter as reasonably practicable.

9.10 The parties shall agree upon a minimum order quantity for the manufacture and supply of each dosage strength the PRODUCT. ELAN shall have the right to refuse to fulfil orders which do not conform with the provisions of this Clause 9.10. Where ELAN in its absolute discretion, fulfils any order which does not conform with the provisions of this Clause 9.10, the fulfillment of such order by ELAN shall not affect ELAN's right to refuse to fulfil any subsequent order which does not conform with the provisions hereof.

9.11 Save as otherwise agreed between the parties, delivery of consignments of PRODUCT shall be effected by ELAN EX-WORKS the manufacturing facility designated by ELAN. Risk of loss of or damage to any consignment of the PRODUCT shall pass to LIGAND when each such consignment of the PRODUCT is loaded onto the vehicle of LIGAND's agent on which it is to be despatched from the manufacturing facility designated by ELAN. LIGAND shall fully insure or procure the insurance of all consignments of the PRODUCT from the time when risk passes as aforesaid and shall produce the supporting insurance when requested by ELAN.

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9.12 All claims for failure of any delivery of the PRODUCT to conform to the SPECIFICATIONS under Clause 14 shall be made by LIGAND to ELAN in writing within [*****] following delivery except in the case of latent defects. Claims for latent defects, which could not reasonably have been discovered during the routine testing protocol (to be agreed by LIGAND and ELAN), shall be made by LIGAND to ELAN in writing within [*****] of discovery. Failure to make timely claims in the manner prescribed shall constitute acceptance of the delivery.

9.13 PRODUCT which has been delivered and which has been shown within the period designated in Clause 9.12 not to conform to the SPECIFICATIONS where such non-conformity is attributable to negligent acts or omissions of ELAN shall be replaced at ELAN's cost within [*****] of the receipt by ELAN of the failed PRODUCT except where such non-conformity is attributable to negligent acts or omissions of LIGAND.

9.14 In the event of an unresolved dispute as to conformity of the PRODUCT with the SPECIFICATIONS, the parties shall within 30 days appoint an independent

first class laboratory to undertake the relevant testing and its findings shall be conclusive and binding upon the parties. All costs relating to this process shall be borne solely by the unsuccessful party. In the event that the parties should fail to agree a mutually acceptable independent laboratory within such 30 day period, the Head of the School of Pharmacy, Trinity College, Dublin, Ireland shall be entrusted with appointing such independent laboratory.

9.15 In the event that ELAN fails to deliver to LIGAND a significant portion of an order of PRODUCT for a period exceeding [*****] from the due delivery date therefor, or there are [*****] are caused by the supplier of the COMPOUND or other raw materials or due to the applicable governmental imposed quota system for the COMPOUND), ELAN shall, if requested by LIGAND, meet with LIGAND as soon as possible thereafter to discuss the reasons for the [*****] and outline to LIGAND its plans to remedy the situation. If following such meeting, or further meetings which may be agreed by the parties, the parties agree that ELAN is unlikely to remedy the situation within 90 days of the last such meeting, upon written request by LIGAND, ELAN shall for so long as such conditions exist:

9.15.1 grant to LIGAND a production licence in the applicable country or countries of the TERRITORY so that LIGAND may manufacture the relevant PRODUCT without infringing any of the ELAN INTELLECTUAL PROPERTY. Any such licence shall apply only in regard to the relevant PRODUCT as well as to the applications of technology derived from the ELAN PATENT RIGHTS related to its use with such PRODUCT;

9.15.2 provide LIGAND with any technical data incorporated in the ELAN KNOW-HOW, including but not limited to, access to the CMC SECTION, to give effect to the provisions of Clause 9.15.1 and ELAN shall promptly provide to LIGAND the documentation constituting the required material support, more particularly

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practical performance advice, shop practice, specifications as to materials to be used and control methods; and

9.15.3 assist LIGAND with the working up and use of the technology and with the training of LIGAND's personnel to the extent which may reasonably be necessary in relation to the manufacture of the PRODUCT by LIGAND. In this regard, ELAN will receive LIGAND's scientific staff in its premises for certain periods, the term of which will be agreed by the parties.

For the avoidance of doubt, the parties confirm that a royalty of [*****] shall be payable by LIGAND to ELAN on sales of PRODUCT manufactured by LIGAND hereunder.

9.16 When ELAN has remedied the cause of its failure to satisfy LIGAND's requirements and is once again able to fulfil its obligations to supply the PRODUCT, LIGAND shall cease manufacturing the PRODUCT and shall resume purchasing the PRODUCT exclusively from ELAN pursuant to the terms of this Agreement provided that LIGAND shall be entitled to manufacture the PRODUCT for such period as is [*****] to enable LIGAND to [*****] by LIGAND in establishing its manufacturing capability for the PRODUCT prior to commercial production of the PRODUCT as provided for in this Clause 9.16. To the extent LIGAND's FULLY ALLOCATED COST of manufacturing the PRODUCT is [*****] to which ELAN would be entitled to under Clause 10.3.1, such [*****] of LIGAND's FULLY ALLOCATED COST expended in establishing such manufacturing capability for the PRODUCT. Furthermore, the royalty payable by LIGAND to ELAN pursuant to Clause 9.15 on sales of PRODUCT manufactured by LIGAND shall be [*****] from [*****] to [*****]. Such [*****] in the royalty shall be [*****] towards [*****] of such FULLY ALLOCATED COST [*****] by LIGAND establishing such manufacturing capability for the PRODUCT. At such time LIGAND [*****] such FULLY ALLOCATED COST from the [*****] price of PRODUCT and the reduction in royalty payments, the royalty payable pursuant to Clause 9.15 shall revert to [*****]. Upon cessation of manufacture by LIGAND under this Clause 9.16, the production licence

granted by ELAN to LIGAND under Clause 9.15 shall automatically terminate.

9.17 In manufacturing the PRODUCT under Clause 9.15, LIGAND shall be responsible for all process and equipment validation required by the FDA and the regulations thereunder and shall take all steps reasonably necessary to pass government inspection by the FDA.

9.18 At any time during the INITIAL PERIOD, ELAN shall be entitled to notify LIGAND of its intention to cease manufacture of the PRODUCT due to poor economic return on the PRODUCT, provided, however, that such notice is given to LIGAND at least [*****] prior to the date ELAN intends to cease manufacturing the PRODUCT. In such event, ELAN shall grant LIGAND a production licence in accordance with Clauses 9.15 and 9.17. For the avoidance of doubt, the parties confirm that a royalty of

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[*****] shall be payable by LIGAND to ELAN on sales of PRODUCT manufactured by LIGAND hereunder.

9.19 ELAN will grant to [*****] or any other subsidiaries of ELAN, as necessary or appropriate, a licence of the ELAN PATENTS and ELAN KNOW-HOW and other intellectual property rights necessary for such company or companies to manufacture the PRODUCT in accordance with the terms of this Agreement.

CLAUSE 10 - FINANCIAL PROVISIONS

10.1 Licence Royalties:

10.1.1 In consideration of the licence of the ELAN PATENTS granted to LIGAND under this Agreement, LIGAND shall pay to ELAN the following amounts:-

- (1) \$5 million in cash or in shares of Common Stock of LIGAND, par value \$.001 per share (the "Common Stock") (valued at \$11.65 per share), at LIGAND's option, upon the execution of the Agreement by both parties;
- (2) \$10 million in cash, or at LIGAND's option, in cash through an increase in the issue amount of the CONVERTIBLE NOTE, upon the execution of the Agreement by both parties;
- (3) [*****] in cash or in shares of Common Stock of LIGAND (valued at a price per share equal to [*****]); and
- (4) [*****] in cash or in shares of Common Stock of LIGAND (valued at a price per share equal to [*****]).

10.1.2. In the event that LIGAND elects to issue shares of the Common Stock pursuant to Clause 10.1.1(1), (3) or (4) or the CONVERTIBLE NOTE pursuant to Clause 10.1.1(2), each such issuance shall be made pursuant to, and subject to the terms and conditions set forth in, the PURCHASE AGREEMENT. Nothing in this Agreement shall relieve LIGAND from its obligations to make the payments set forth in Clauses 10.1.1(1), (2), (3), or (4), in cash, in the event that any of the applicable conditions set forth in the PURCHASE AGREEMENT are not satisfied or waived on or prior to the required payment date thereof; provided however, that in the event that LIGAND elects to issue shares of Common Stock pursuant to Clause 10.1.1(1), (3) or (4) and ELAN is unable to satisfy the conditions to such issuance as set forth in the PURCHASE AGREEMENT or if such conditions have not been waived by LIGAND, as the case may be, LIGAND and ELAN shall negotiate in good faith to agree upon customary terms and conditions which will enable LIGAND to issue such shares pursuant to a transaction exempt from the registration requirements of the Securities Act pursuant to Regulation D thereunder, including the giving by ELAN, to the extent possible, of representations and warranties in connection therewith.

10.2 Additional Assistance and Work:

In the event that work or technical assistance beyond that specified in Schedule 3 ("ADDITIONAL WORK") is requested by LIGAND, or is necessary to complete the development of the PRODUCT, LIGAND shall reimburse ELAN in respect of the cost of such ADDITIONAL WORK requested by LIGAND or required pursuant to the terms of this Agreement provided that:

- 10.2.1 where ELAN conducts ADDITIONAL WORK under Clause 10.2, ELAN's charges for such work shall be ELAN's [*****] except where ELAN is supervising any clinical studies for LIGAND, ELAN's charges for such supervisory work shall be ELAN's [*****].
- 10.2.2 payment for all ADDITIONAL WORK carried out by ELAN hereunder shall be effected in U.S. Dollars within [*****] of the date of receipt of the relevant invoice for completed ADDITIONAL WORK.

10.3 Price of PRODUCT:

10.3.1 The price of the PRODUCT to be charged by ELAN to LIGAND for commercial sale shall be :

- (1) [*****] of NSP for the [*****] in the TERRITORY;
- (2) [*****] of NSP for the [*****] in the TERRITORY; and
- (3) [*****] of NSP for [*****] during the INITIAL PERIOD of the Agreement.

Said price shall apply to PRODUCT supplied EX WORKS ELAN's facility to LIGAND. Notwithstanding the other provisions of this Agreement, ELAN shall in no circumstances be obliged to supply PRODUCT to LIGAND for commercial sale at less than [*****] ("FLOOR PRICE").

10.3.2 The price of the PRODUCT to be charged to LIGAND for supplies of PRODUCT for distribution as [*****] promotional samples (including an indigent patient program not to exceed [*****] of PRODUCT sold IN MARKET by LIGAND in each country of the TERRITORY) in its marketing of the PRODUCT shall be equivalent to [*****] which price shall apply to PRODUCT supplied EX WORKS ELAN's facility to LIGAND.

10.3.3 ELAN shall supply the PRODUCT to LIGAND at the [*****]. The purchase price of the PRODUCT may be adjusted by ELAN each calendar quarter with the understanding that such purchase price is intended to represent the [*****].

10.3.4 Within 45 days of the end of each calendar quarter, LIGAND shall notify ELAN of the NSP of PRODUCT for that previous calendar quarter and pay to ELAN the excess of: (i) the percentage of NSP of PRODUCT for that previous calendar

quarter calculated in accordance with Clause 10.3.1. over (ii) the [*****] paid by LIGAND for such PRODUCT pursuant to Clause 10.3.4.

10.3.5 Payment for all PRODUCT supplied by ELAN to LIGAND shall be made in \$ within [****] of the date of the relevant invoice.

10.3.6 All prices for the PRODUCT are exclusive of any applicable value added or any other sales tax, for which LIGAND will be additionally liable.

10.3.7 In the event that LIGAND shall sell the PRODUCT together with other

products of LIGAND to third parties (by the method commonly known in the pharmaceutical industry as "bundling") and the price attributable to the PRODUCT is less than the average price of "arms length" sales to similar customers for the reporting period in which sales occur (such sales to be excluded from the calculation of the average price of "arms length" sales), NSP for any such sales shall be the average price of "arms length" sales by LIGAND to similar customers in the country where such bundling occurs during the reporting period in which such sales occur.

10.3.8 For the avoidance of doubt the parties agree that if for whatever reason the PRODUCT supplied by ELAN to LIGAND is not sold by LIGAND, payment to ELAN for such PRODUCT shall nonetheless be effected at [*****].

CLAUSE 11 - PAYMENTS, REPORTS AND AUDITS

- 11.1 LIGAND shall keep true and accurate records of gross sales of the PRODUCT, the items deducted from the gross amount in calculating the NSP, the NSP and the royalties payable to ELAN under Clause 10. LIGAND shall deliver to ELAN a written statement ("the STATEMENT") thereof within 45 days following the end of each calendar quarter, (or any part thereof in the first or last calendar quarter of this Agreement) for such calendar quarter. The STATEMENT shall outline on a country-by-country basis, the calculation of the NSP from gross revenues during that calendar quarter, the applicable percentage rate, and a computation of the sums due to ELAN (i.e. the price of the PRODUCT determined in accordance with Clause 10.3.1 less [*****]). The parties' financial officers shall agree upon the precise format of the STATEMENT.
- 11.2 Payments due on NSP of the PRODUCT based on sales amounts in a currency other than US Dollars shall first be calculated in the foreign currency and then converted to US Dollars on the basis of the exchange rate in effect for the purchase of US Dollars with such foreign currency quoted in the Wall Street Journal (or comparable publication if not quoted in the Wall Street Journal) with respect to the sale of currency of the country of origin of such payment for the day prior to the date on which the payment by LIGAND is being made.
- 11.3 Any income or other taxes which LIGAND is required by law to pay or withhold on behalf of ELAN with respect to royalties and any other monies payable to ELAN under
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- this Agreement shall be deducted from the amount of such NSP payments, royalties and other monies due. LIGAND shall furnish ELAN with proof of such payments. Any such tax required to be paid or withheld shall be an expense of and borne solely by ELAN. LIGAND shall promptly provide ELAN with a certificate or other documentary evidence to enable ELAN to support a claim for a refund or a foreign tax credit with respect to any such tax so withheld or deducted by LIGAND. The parties will reasonably cooperate in completing and filing documents required under the provisions of any applicable tax treaty or under any other applicable law, in order to enable LIGAND to make such payments to ELAN without any deduction or withholding.
- 11.4 All payments due hereunder shall be made to the designated bank account of ELAN in accordance with such timely written instructions as ELAN shall from time to time provide.
- 11.5 LIGAND shall pay interest to ELAN at the Prime Rate publicly announced by Morgan Guaranty Trust Company of New York at its principal office on the date (or next to occur business day, if such date is not a business day) on which payment should have been made pursuant to the applicable provisions of this Agreement plus [****] on all late payments more than 10 days past due under this Agreement applicable from the date on which payment should have been made pursuant to the applicable provisions of this Agreement until the date of payment.
- 11.6 Where meetings of the PROJECT TEAM have ceased and where ELAN so requests to supplement the information available to ELAN at the meetings of the

parties under Clause 8.7, LIGAND shall provide ELAN with annual sales reports outlining the status of the PRODUCT in the TERRITORY, including a report on the competitive position of the PRODUCT in its relevant market segment(s).

- 11.7 For the 180 day period following the close of each calendar year of the Agreement, ELAN and LIGAND will, in the event that the other party reasonably requests such access, provide each other's independent certified accountants (reasonably acceptable to the other party) with access, during regular business hours and subject to the confidentiality provisions as contained in this Agreement, to such party's books and records relating to the PRODUCT, solely for the purpose of verifying the accuracy and reasonable composition of the calculations hereunder for the calendar year then ended.
- 11.8 In the event of a discovery of a discrepancy which exceeds [***] of the amount due or charged by a party for any period, the cost of such accountants shall be borne by the audited party; otherwise, such cost shall be borne by the auditing party.
- 11.9 ELAN shall make (and where relevant shall procure that ELAN's subcontractor shall make) that portion of its manufacturing, testing or storage facility where PRODUCT is manufactured, tested or stored, including all record and reference samples relating to the PRODUCT available for inspection by LIGAND's duly qualified person or by the relevant governmental or regulatory authority. The investigation shall be limited to

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determining whether there is compliance with cGMP and other requirements of applicable law.

CLAUSE 12 - DURATION AND TERMINATION

- 12.1 This Agreement shall be deemed to have come into force on the EFFECTIVE DATE and, subject to the rights of termination outlined in this Clause 12 will expire on a country by country basis:
- 12.1.1 on the [*****] of the date of the launch of the PRODUCT in the country concerned; or
- 12.1.2 in any country upon the expiration of the life of the last to expire patent included in the ELAN PATENTS in that country;
- whichever date is later to occur ("the INITIAL PERIOD").
- 12.2 Not later than [*****] prior to the end of the INITIAL PERIOD on a country by country basis, ELAN and LIGAND shall enter into a long-term supply agreement upon terms and conditions to be mutually agreed between the parties. If the parties fail to enter into such a long-term supply agreement, ELAN shall grant LIGAND a licence to the ELAN KNOW-HOW to manufacture the PRODUCT for sale in the TERRITORY and access to the CMC SECTION of the NDA APPROVAL upon terms and conditions to be mutually agreed between the parties, including a [*****] on NSP of sales of such PRODUCT.
- 12.3 In addition to the rights of termination provided for elsewhere in this Agreement, either party will be entitled forthwith to terminate this Agreement by written notice to the other party if:
- 12.3.1 that other party commits any material breach of this Agreement, and (A) in the case of a breach capable of cure, fails to cure the same within 60 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied or (B) in the case of a breach not capable of cure, the non-breaching party has a remedy at law;
- 12.3.2 that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);

12.3.3 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;

12.3.4 any proceedings are filed or commenced by that other party under bankruptcy, insolvency or debtor relief laws or anything analogous to any of the foregoing

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under the laws of any jurisdiction occurs in relation to that other party, and such proceeding is not dismissed within 90 days;

12.4 For the purposes of Clause 12.3.1, a breach will be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

12.5 In further addition to the rights and termination provided for elsewhere in this Agreement, ELAN shall be entitled to terminate the licence granted to LIGAND under this Agreement for any country or countries of the TERRITORY in the event that:-

12.5.1 LIGAND fails to effect any one of the commercial launches required by Clause 8 in accordance with the provisions thereof; or

12.5.2 a TECHNOLOGICAL COMPETITOR of ELAN shall directly or indirectly, acquire [*****] or more of LIGAND's capital stock, or otherwise control or influence in any material respect the management or business of LIGAND, or

12.5.3 any person or entity other than a TECHNOLOGICAL COMPETITOR shall acquire [*****] or more of the voting stock of LIGAND, or otherwise merge, consolidate or enter into any similar transaction (or binding agreement in respect thereof) with LIGAND; provided, however, that the foregoing shall not apply in relation to any exercise of any options by ELAN as contemplated herein or by the FINANCE AGREEMENTS.

CLAUSE 13 - CONSEQUENCES OF TERMINATION

13.1 Upon exercise of those rights of termination specified in Clause 12 or elsewhere in this Agreement, this Agreement shall, subject to the provisions of the Agreement which survive the termination of the Agreement automatically terminate forthwith and be of no further legal force or effect.

13.2 Upon termination of the Agreement by either party, or upon termination by ELAN of a licence for a particular country under Clause 12.5, the following shall be the consequences relating to the TERRITORY or the particular country, as applicable:

13.2.1 any sums that were due from LIGAND to ELAN under the provisions of Clause 10 or otherwise howsoever prior to the exercise of the right to terminate this Agreement as set forth herein shall be paid in full within 30 days of termination of this Agreement and, subject to Clause 13.2.4, ELAN shall not be liable to repay to LIGAND any amount of money paid or payable by LIGAND to ELAN up to the date of the termination of this Agreement;

13.2.2 all confidentiality provisions set out herein shall remain in full force and effect for a period of [*****] from the date of termination of this Agreement;

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13.2.3 all responsibilities and warranties shall insofar are appropriate remain in full force and effect;

- 13.2.4 the rights of inspection and audit shall continue in force for the period referred to in the relevant provisions of this Agreement;
- 13.2.5 ELAN shall be entitled to research, develop and commercialise the PRODUCT for its own benefit in the TERRITORY or in the relevant country or countries of the TERRITORY;
- 13.2.6 the licence granted by ELAN to LIGAND of the ELAN TRADEMARK under Clause 3.5 shall automatically terminate; and
- 13.2.7 the option granted by ELAN to LIGAND to co-promote the PRODUCT in the Member States of the EU (excluding Ireland and Great Britain) under Clause 2.2.2. shall automatically terminate.

CLAUSE 14 - WARRANTY AND INDEMNITY

- 14.1 ELAN represents and warrants that it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by ELAN and constitutes a valid and legally binding agreement of ELAN enforceable against ELAN in accordance with its terms, except that (A) the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought and (B) any rights to indemnity or contribution thereunder may be limited by federal and state securities laws and public policy considerations.
- 14.2 ELAN represents and warrants that it has the sole, exclusive and unencumbered right to grant the licences and rights herein granted to LIGAND, and that it has not granted any option, licence, right or interest in or to the ELAN PATENTS or ELAN KNOW-HOW to any third party which would conflict with the rights granted by this Agreement. ELAN also represents and warrants that none of the EXCLUDED PATENTS or EXCLUDED KNOW-HOW is necessary to import, use, offer for sale, sell and make or have made the PRODUCT. ELAN agrees to hold LIGAND harmless from any and all damages and reasonable out-of-pocket expenses and costs (including reasonable attorneys' fees) incurred or sustained by LIGAND as the result of any third party's challenges to ELAN's right to grant the licences and rights herein granted to LIGAND.
- 14.3 ELAN represents and warrants that the execution of this Agreement and the consummation of the transactions contemplated hereby will not breach or in any way conflict with the terms and conditions of any licence, contract, understanding or agreement, whether express, implied, written or oral between ELAN and any third party.
- 14.4 ELAN represents and warrants that no consent, approval, authorization or order of any

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court or governmental agency or body or third party is required for the execution and delivery by ELAN of this Agreement of the consummation by ELAN of the transactions contemplated hereby, except that no representation or warranty is made with respect to filings required by the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended, upon issuance of shares of Common Stock of LIGAND pursuant to Clauses 10.1.1 (3) and (4) hereof.

- 14.5 ELAN represents and warrants that, once successfully developed, the PRODUCT supplied by ELAN to LIGAND under this Agreement will conform to:
- 14.5.1 the SPECIFICATIONS;
- 14.5.2 all applicable regulations and requirements of the FDA including the then cGMP regulations which apply to the manufacture and supply of the PRODUCT.

EXCEPT AS EXPRESSLY STATED IN THIS CLAUSE 14, ALL OTHER

WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING A WARRANTY AS TO THE QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PRODUCT ARE HEREBY EXCLUDED AND EXCEPT AS EXPRESSLY STATED IN THIS CLAUSE 14, ELAN SHALL NOT BE LIABLE IN CONTRACT, TORT OR OTHERWISE FOR ANY LOSS, DAMAGE, EXPENSE OR INJURY, ARISING OUT OF OR IN CONNECTION WITH THE PRODUCT OR ANY DEFECT IN THE PRODUCT OR FROM ANY OTHER CAUSE.

- 14.6 LIGAND represents and warrants that it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly and validly authorized, executed and delivered by LIGAND and constitutes a valid and legally binding agreement of LIGAND enforceable against LIGAND in accordance with its terms, except that (A) the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought and (B) any rights to indemnity or contribution thereunder may be limited by federal and state securities laws and public policy considerations.
- 14.7 LIGAND represents and warrants that the execution, delivery and performance by LIGAND of this Agreement and the consummation by LIGAND of the transactions contemplated hereby will not conflict with or constitute or result in a breach of or a default under (or an event which with notice or passage of time or both would constitute a default under) or violation of any of (i) the terms or provisions of any indenture, mortgage, deed of trust, loan agreement, note, lease, license, franchise agreement, permit, certificate, contract or other agreement or instrument to which LIGAND is bound or to which any of its properties or assets is subject, except for any such conflict, breach, default, violation or event which would not, individually or in the aggregate, have a material adverse effect on the business, assets, liabilities (contingent or otherwise,

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operations, condition (financial or otherwise), solvency, properties, prospects or material agreements of the LIGAND (any such event, a "Material Adverse Effect"), (ii) the certificate of incorporation or bylaws of LIGAND or (iii) (assuming compliance with all applicable state securities or "Blue Sky" laws and assuming the accuracy of the representations and warranties of each of ELAN set forth in this Clause 14 of this Agreement and the accuracy of the representations and warranties of ELAN and Elan International Services, Ltd., set forth in Section 4 of the SECURITIES PURCHASE AGREEMENT of even date herewith) any statute, judgment, decree, order, rule or regulation applicable to LIGAND or any of its properties or assets, except for any such conflict, breach or violation which would not, individually or in the aggregate, have a Material Adverse Effect.

- 14.8 LIGAND represents and warrants that no consent, approval, authorization or order of any court or governmental agency or body or third party is required for the execution and delivery by LIGAND of this Agreement of the consummation by LIGAND of the transactions contemplated hereby, except that no representation or warranty is made with respect to filings required by the Hart-Scot Rodino Antitrust Improvements Act of 1976, as amended, upon issuance of shares of Common Stock of LIGAND pursuant to Clauses 10.1.1 (3) and (4) hereof.
- 14.9 LIGAND represents and warrants to ELAN that in the promotion, marketing, transporting, storing, handling, distributing and selling the PRODUCT hereunder:
- 14.9.1 it will exercise all due skill, care and diligence in conducting such activities; and
- 14.9.2 it will comply with the provisions of this Agreement, all FDA and other approvals, all applicable state and local regulatory approvals and all applicable laws, ordinances and regulations.
- 14.10 LIGAND represent and warrants that immediately after the consummation of the transactions contemplated by this Agreement. the fair value and present

fair saleable value of the assets of LIGAND (on a consolidated basis) will exceed the sum of its stated liabilities and identified contingent liabilities; LIGAND (on a consolidated basis) is, nor will LIGAND (on a consolidated basis) be, after giving effect to the execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby and thereby, (a) left with unreasonably small capital with which to carry on its business as it is proposed to be conducted, (b) unable to pay its debts (contingent or otherwise) as they mature or (c) otherwise insolvent.

14.11 ELAN is cognisant in all material respects of all applicable statutes, ordinances and regulations of the TERRITORY with respect to the manufacture of the PRODUCT including, but not limited to the FFDCA, including cGLP and cGMP. ELAN shall manufacture or procure the manufacture the PRODUCT in conformance with the SPECIFICATIONS and the relevant NDA or DMF and in a manner which complies in all material respects with such statutes, ordinances, regulations and practises.

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14.12 Each of the parties shall indemnify, defend and hold harmless the other party from all actions, losses, claims, demands, damages, costs and liabilities (including reasonable attorneys' fees) to which the other party is or may become liable insofar as they arise out of any breach by the first party of any of its obligations or warranties under this Agreement.

14.13 ELAN represents and warrants that, as of the date of this Agreement, to the best of its knowledge and belief, that making, using or selling the PRODUCT would not infringe any patent of any third party in the TERRITORY.

14.14 As a condition of obtaining an indemnity in the circumstances set out in Clauses 14.5, 14.6 and 14.9, the party seeking an ----- indemnity shall:

14.14.1 fully and promptly notify the other party of any claim or proceedings, or threatened claim or proceedings;

14.14.2 permit the indemnifying party to take full control of such claim or proceedings;

14.14.3 assist in the investigation and defence of such claim or proceedings;

14.14.4 not compromise or otherwise settle any such claim or proceedings without the prior written consent of the other party, which consent shall not be unreasonably withheld; and

14.14.5 take all reasonable steps to mitigate any loss or liability in respect of any such claim or proceedings.

14.15 Notwithstanding anything to the contrary in this Agreement, ELAN and LIGAND shall not be liable to the other by reason of any representation or warranty, condition or other term or any duty of common law, or under the express terms of this Agreement, for any consequential or incidental or punitive loss or damage (whether for loss of profits or otherwise) and whether occasioned by the negligence of the respective parties, their employees or agents or otherwise.

CLAUSE 15 - ADVERSE EVENTS AND PRODUCT RECALL

15.1 Each party shall notify the other party promptly:

15.1.1 of any complaints from third parties reported to such party involving any serious and unexpected adverse reactions resulting from the use of the PRODUCT; and

15.1.2 of any potential recall of the PRODUCT by any governmental authority.

15.2 LIGAND and ELAN shall establish a procedure for formal adverse event handling and reporting. It is envisaged that LIGAND shall be responsible

for

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furnishing post-marketing reports to ELAN and where applicable, ELAN will be responsible for furnishing such reports to the FDA. LIGAND and ELAN shall keep each other informed and shall copy the other party with all communications with the FDA and other relevant regulatory agencies with respect to the PRODUCT.

15.3 In the event of any recall of the PRODUCT, as suggested or requested by any governmental authority:

15.3.1 LIGAND shall perform the recall of the PRODUCT in the TERRITORY and save as provided in Clause 15.3.2, [*****].

15.3.2 If the recall arises from ELAN's negligent acts or omissions in manufacturing the PRODUCT, the recall costs [*****] provided that LIGAND [*****] of the PRODUCT [*****].

In the event that ELAN [*****] hereunder, ELAN shall be entitled but shall not be obliged to [*****] of the PRODUCT described in Clause 15.3.1 and LIGAND shall provide ELAN [*****] by ELAN.

15.3.3 Neither party shall be liable to the other party or to any third party for consequential or incidental damages which may arise as a result of the recall of the PRODUCT.

15.4 In the event that ELAN exercises its option pursuant to Clause 2.2, the parties shall review, and if appropriate, negotiate and amend the provisions of Clause 15, as appropriate.

CLAUSE 16 - MISCELLANEOUS PROVISIONS

16.1 Secrecy:

16.1.1 Any information, whether written or oral (oral information shall be reduced to writing within one month by the party giving the oral information and the written form shall be furnished to the other party) pertaining to the PRODUCT that has been or will be communicated or delivered by ELAN to LIGAND, or by LIGAND to ELAN, including, without limitation, trade secrets, business methods, and cost, supplier, manufacturing and customer information, shall be treated by LIGAND and ELAN, respectively, as confidential information, and shall not be disclosed or revealed to any third party whatsoever or used in any manner except as expressly provided for herein; provided, however, that such confidential information shall not be subject to the restrictions and prohibitions set forth herein to the extent that such confidential information:

(1) is available to the public in public literature or otherwise, or after disclosure by one party to the other becomes public knowledge through no default of the party receiving such confidential information; or

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(2) was known to the party receiving such confidential information prior to the receipt of such confidential information by such party, whether received before or after the date of this Agreement; or

(3) is obtained by the party receiving such confidential information from a third party not subject to a requirement of confidentiality with respect to such confidential information; or

(4) is required to be disclosed pursuant to: (A) any order of a court having jurisdiction and power to order such information to be

released or made public; or (B) any lawful action of a governmental or regulatory agency provided that each party shall notify the other in writing of any disclosure of information required hereunder prior to such disclosure.

16.1.2 Each party shall take in relation to the confidential information of the other party all such precautions as it normally takes with its own confidential information to prevent any improper disclosure of such confidential information to any third party; provided, however, that such confidential information may be disclosed within the limits required to obtain any authorisation from the applicable FDA or any governmental or regulatory agency or, with the prior written consent of the other party, which shall not be unreasonably withheld, or as may otherwise be required in connection with the purposes of this Agreement.

16.1.3 LIGAND agrees that it will not use, directly or indirectly, any ELAN KNOW-HOW, or other confidential information disclosed to it by ELAN or obtained by it from ELAN pursuant to this Agreement, other than as expressly provided herein.

16.1.4 Neither party will publicise the existence of this Agreement in any way without the prior written consent of the other party subject to the disclosure requirements of applicable laws and regulations. In the event that either party wishes to make an announcement concerning the Agreement, that party will seek the consent of the other party. The terms of any such announcement shall be agreed in good faith.

16.1.5 At the request of a party in writing, the other party shall not disseminate any public announcement for a period of 60 days from the receipt of such request regarding this Agreement or the transactions contemplated hereby or regarding such requesting party, without such requesting party's consent, which shall not be unreasonably withheld, provided, however, a party may disseminate a public announcement regarding the foregoing if such party obtains an opinion of independent counsel that such party is obligated by law to disseminate such information to the public.

16.2 Specific Performance:

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Each of ELAN and LIGAND acknowledges and agrees that in the event either party materially breaches an obligations under this Agreement which can be specifically performed, the aggrieved party shall be entitled to seek specific performance of this Agreement and to enjoin any continuing breach of this Agreement (without the necessity of proving actual damages and without posting bond or other security), in addition to any other remedy which such aggrieved party may be entitled to at law or in equity and each of ELAN and LIGAND will waive the defence in any action for specific performance or other equitable relief that a remedy at law would be adequate or that the services provided hereunder are personal in nature.

16.3 Assignments/Sub-contracting:

Neither party shall be permitted to assign or sub-licence any of its rights under this Agreement without the prior written consent of the other; provided that ELAN and LIGAND may assign this Agreement to an AFFILIATE without such consent provided that such assignment has no adverse tax implications for the other party and provided further that such assigning party is not relieved of its obligations hereunder. Notwithstanding the foregoing, but subject to ELAN's right to terminate this Agreement in Clause 12.5.3, LIGAND may transfer or assign its rights under this Agreement without the prior written consent of ELAN to a person that acquires all or substantially all of the assets or capital stock of LIGAND, provided that such assignment has no adverse tax implications for ELAN under this Agreement (but not in connection with the transfer of Shares of Common Stock of LIGAND granted to ELAN pursuant to this Agreement or the Securities Purchase Agreement). ELAN shall also have the right to subcontract all or any portion of the manufacturing or packaging of the

PRODUCT to one or more third parties. LIGAND shall also have the right to subcontract all or any of its obligation regarding development of the PRODUCT. Each party shall be responsible for the acts and/or omissions of its respective AFFILIATES and subcontractors.

16.4 Parties bound:

This Agreement shall be binding upon and enure for the benefit of parties hereto, their successors and permitted assigns.

16.5 Severability:

If any provision in this Agreement is agreed by the parties to be, or is deemed to be, or becomes invalid, illegal, void or unenforceable under any law that is applicable hereto:

16.5.1 such provision will be deemed amended to conform to applicable laws so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the parties, it will be deleted, with effect from the date of such agreement or such earlier date as the parties may agree; and

16.5.2 the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way.

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16.6 Force Majeure:

Neither party to this Agreement shall be liable for delay in the performance of any of its obligations hereunder if such delay results from causes beyond its reasonable control, including, without limitation, acts of God, fires, strikes, acts of war, or intervention of a government authority, non-availability of raw materials, but any such delay or failure shall be remedied by such party as soon as practicable.

16.7 Relationship of the parties:

Nothing contained in this Agreement is intended or is to be construed to constitute ELAN and LIGAND as partners or members of a joint venture or either party as an employee of the other. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

16.8 Amendments:

No amendment, modification or addition hereto shall be effective or binding on either party unless set forth in writing and executed by a duly authorised representative of both parties.

16.9 Waiver:

No waiver of any right under this Agreement shall be deemed effective unless contained in a written document signed by the party charged with such waiver, and no waiver of any breach or failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other right arising under this Agreement.

16.10 No effect on other agreements:

This Agreement supersedes that certain Letter of Intent dated September 28, 1998 between the parties as such Letter of Intent relates to the subject matter hereof. Except as limited by the foregoing sentence, no provision of this Agreement shall be construed so as to negate, modify or affect in any way the provisions of any other agreement between the parties unless specifically referred to, and solely to the extent provided, in any such other agreement.

16.11 Governing law and jurisdiction:

This Agreement is construed under and ruled by the laws of New York. For the purposes of this Agreement the parties submit to the non-exclusive jurisdiction of the courts of New York.

16.12 Notice:

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16.12.1 Any notice or communications to be given under this Agreement shall be written in English and shall be sufficiently given if delivered personally or sent by nationally recognised overnight delivery service, or telecopier (receipt confirmed), addressed as follows:

ELAN at

Elan Corporation, plc.
Lincoln House
Lincoln Place
Dublin 2
Ireland.

Attention: Vice-President & General Counsel,
Elan Pharmaceutical Technologies

Telephone: 353 1 7094000

Telefax: 353 1 6624960

LIGAND at

Ligand Pharmaceuticals Incorporated
10275 Science Center Drive
San Diego
California 92121
USA.

Attention: General Counsel

Telephone: (619) 550-7500

Telefax: (619) 550-7506

or to such other address(es) and telecopier numbers as may from time to time be notified by either party to the other hereunder.

16.12.2 Any notice sent by mail shall be deemed to have been delivered within 7 working days after dispatch and any notice sent by telecopy shall be deemed to have been delivered within 24 hours of the time of the despatch. Notice of change of address shall be effective upon receipt.

IN WITNESS of which the parties have executed this Agreement.

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Executed by LIGAND on November , 1998

By : /s/ William L. Respass

Name: William L. Respass

Senior Vice President General

Title: Counsel, Government Affairs

Executed by ELAN on November , 1998

By: /s/ Liam Daniel

Name: Liam Daniel

Title: Group Vice President, Finance

SCHEDULE 1

ELAN PATENTS

[*****]

[*****]

[*****]

[*****]

[*****]

[*****]

SCHEDULE 2

SPECIFICATIONS

SCHEDULE 3

CLINICAL TRIALS

[*****]