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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2003

OR

☐ **TRANSITION REPORTS PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number: 0-27488

INCYTE CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	**94-3136539**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**

3160 Porter Drive
Palo Alto, California 94304
(Address of principal executive offices)

(650) 855-0555
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). ☒ Yes ☐ No

The number of outstanding shares of the registrant's Common Stock, $0.001 par value, was 72,175,709 as of July 31, 2003.

INCYTE CORPORATION

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PART I: FINANCIAL INFORMATION

Item 1: Financial Statements

INCYTE CORPORATION
Condensed Consolidated Balance Sheets
(in thousands)
(unaudited)

	June 30, 2003	December 31, 2002*
ASSETS		
Current assets:		
Cash and cash equivalents	$ 22,015	$ 22,928
Marketable securities—available-for-sale	338,624	406,090
Accounts receivable, net(1)	7,515	8,485
Prepaid expenses and other current assets(2)	10,399	21,268
Total current assets	378,553	458,771
Property and equipment, net	32,021	31,787
Long-term investments (3)	31,358	35,515
Intangible and other assets, net (4)	28,543	26,066
Total assets	$ 470,475	$ 552,139
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 5,416	$ 9,073
Accrued compensation	11,156	14,319
Interest payable	3,903	3,903
Accrued and other liabilities(5)	4,772	7,140
Deferred revenue	15,071	11,662
Accrued restructuring charges	18,014	31,596
Accrued acquisition costs	2,964	—
Total current liabilities	61,296	77,693
Convertible subordinated notes	171,823	172,036
Total liabilities	233,119	249,729
Stockholders' equity:		
Common stock	72	67
Additional paid-in capital	726,672	708,163
Deferred compensation	(2,251)	(3,250)
Accumulated other comprehensive income	571	2,454
Accumulated deficit	(487,708)	(405,024)
Total stockholders' equity	237,356	302,410
Total liabilities and stockholders' equity	$ 470,475	$ 552,139

* The condensed consolidated balance sheet at December 31, 2002 has been derived from the audited financial statements at that date.

(1) Includes receivables from companies considered related parties under SFAS 57 of $0.2 million and $0.6 million at June 30, 2003 and December 31, 2002, respectively.

(2) Includes loan receivable from Maxia Pharmaceuticals, Inc. (see Note 12), a company considered a related party under SFAS 57 as of December 31, 2002, of $1.5 million at December 31, 2002, and prepaid expenses to companies considered related parties under SFAS 57 of $1.0 million and $2.1 million at June 30, 2003 and December 31, 2002, respectively.

(3) Includes investments in companies considered related parties under SFAS 57 of $26.1 million and $26.1 million at June 31, 2003 and December 31, 2002, respectively.

(4) Includes loans to executive officers of $0.6 million and $0.8 million, net of amortization, at June 30, 2003 and December 31, 2002 respectively.

(5) Includes accruals of payments to companies considered related parties under SFAS 57 of $0 million and $1.5 million at June 30, 2003 and December 31, 2002, respectively.

See accompanying notes.

INCYTE CORPORATION
Condensed Consolidated Statements of Operations
(in thousands, except per share amounts)
(unaudited)

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
Revenues (1)	$ 11,036	$ 29,059	$ 23,545	$ 58,073
Costs and expenses:				
Research and development (2)	29,870	37,717	60,056	71,460
Selling, general and administrative (3)	7,694	12,748	15,071	26,916
Purchased in-process research and development	—	—	28,116	—
Other expenses	290	1,371	1,393	1,371
Total costs and expenses	37,854	51,836	104,636	99,747
Loss from operations	(26,818)	(22,777)	(81,091)	(41,674)
Interest and other income (expense), net (4)	2,490	6,601	3,723	14,758
Interest expense	(2,439)	(2,389)	(4,878)	(4,927)
Gain on repurchase of convertible subordinated notes	—	1,937	—	1,937
Gain (loss) on certain derivative financial instruments, net	108	(613)	63	(473)
Loss before income taxes	(26,659)	(17,241)	(82,183)	(30,379)
Provision for income taxes	241	300	501	603
Net loss	$ (26,900)	$ (17,541)	$ (82,684)	$ (30,982)
Basic and diluted net loss per share	$ (0.37)	$ (0.26)	$ (1.17)	$ (0.46)
Shares used in computing basic and diluted net loss per share	71,895	67,440	70,441	67,154

(1) Includes revenues from transactions with companies considered related parties under SFAS 57 of $0.2 million and $0.5 million for the three months ended June 30, 2003 and 2002, respectively, and $0.4 million and $1.2 million for the six months ended June 30, 2003 and 2002, respectively.

(2) Includes expenses from transactions with companies considered related parties under SFAS 57 of $0.9 million and $2.8 million for the three months ended June 30, 2003 and 2002, respectively, and $1.0 million and $5.6 million for the six months ended June 30, 2003 and 2002, respectively.

(3) Includes compensation expense related to loans to executive officers of $0.1 million and $0 million for the three months ended June 30, 2003 and 2002, respectively, and $0.2 million and $0 million for the six months ended June 30, 2003 and 2002, respectively.

(4) Includes gains on investments in companies considered related parties under SFAS 57 of $0 million and $0.8 million for the three and six months ended June 30, 2003 and 2002, respectively.

See accompanying notes.

INCYTE CORPORATION
Condensed Consolidated Statements of Comprehensive Loss
(in thousands)
(unaudited)

	Three Months Ended June 30		Six Months Ended June 30	
	2003	2002	2003	2002
Net loss	$ (26,900)	$ (17,541)	$ (82,684)	$ (30,982)
Other comprehensive loss:				
Unrealized losses on marketable securities	(1,363)	(2,188)	(1,853)	(11,747)
Foreign currency translation adjustments	3	(69)	(30)	(248)
Other comprehensive income loss	(1,360)	(2,257)	(1,883)	(11,995)
Comprehensive loss	$ (28,260)	$ (19,798)	$ (84,567)	$ (42,977)

See accompanying notes.

INCYTE CORPORATION
Condensed Consolidated Statements of Cash Flows
(in thousands)
(unaudited)

	Six Months Ended June 30	
	2003	2002
Cash flows from operating activities:		
Net loss	$ (82,684)	$ (30,982)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	8,939	11,254
Non-cash other expenses	393	—
Purchased in-process research and development	28,116	—
Compensation expense on loans to executive officers	172	—
Stock compensation	999	2,328
Gain on repurchase of convertible subordinated notes	—	(1,937)
(Gain) loss on derivative financial instruments, net	(63)	473
Realized gain on long-term investments, net	(456)	(1,106)
Impairment of long-term investments	2,714	—
Debt instruments and equity received in exchange for goods or services provided	—	(2,688)
Changes in certain assets and liabilities:		
Accounts receivable	970	28,909
Prepaid expenses and other assets	3,487	(4,184)
Accounts payable	(4,465)	1,100
Accrued and other current liabilities	(19,904)	(10,806)
Deferred revenue	3,409	(7,188)
Net cash used in operating activities	(58,373)	(14,827)
Cash flows from investing activities:		
Long-term investments	—	(5,000)
Acquisition of Maxia Pharmaceuticals, net of cash acquired	(4,137)	—
Proceeds from the sale of long-term investments	1,838	2,532
Capital expenditures	(6,959)	(6,711)
Purchases of marketable securities	(335,698)	(368,314)
Sales and maturities of marketable securities	401,434	394,515
Loans to executive officers	—	(1,150)
Net cash provided by investing activities	56,478	15,872
Cash flows from financing activities:		
Proceeds from issuance of common stock under stock plans	1,117	4,645
Repurchase of convertible subordinated notes	—	(4,690)
Repurchase of common stock	(105)	—
Other	—	73
Cash provided by financing activities	1,012	28
Effect of exchange rate on cash and cash equivalents	(30)	(248)
Net (decrease) increase in cash and cash equivalents	(913)	825
Cash and cash equivalents at beginning of period	22,928	43,368
Cash and cash equivalents at end of period	$ 22,015	$ 44,193

See accompanying notes.

INCYTE CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
June 30, 2003
(Unaudited)

1. Organization and business

Incyte Corporation ("Incyte", "we", "us" or "our"), formerly Incyte Genomics, Inc., was incorporated in Delaware in April 1991. In March 2003, we changed our name to Incyte Corporation. Incyte is a drug discovery company that is using its expertise in medicinal chemistry and molecular, cellular and in vivo biology to discover and develop novel therapeutics. We believe we have the largest compilation of information regarding full-length human genes and the proteins they encode and the largest commercial portfolio of issued United States patents covering such genes and proteins. We use, license and sell this intellectual property, as well as market our genomic and proteomic information, to many of the world's leading pharmaceutical and biotechnology companies and academic research centers. Incyte has also assembled an experienced and talented drug discovery team that is identifying potential new drug therapies for cancer, inflammatory diseases and other medical conditions.

2. Summary of significant accounting policies

Basis of presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. The condensed consolidated balance sheet as of June 30, 2003, condensed consolidated statements of operations for the three and six months ended June 30, 2003 and 2002, condensed consolidated statements of comprehensive loss for the three and six months ended June 30, 2003 and 2002 and the condensed consolidated statements of cash flows for the six months ended June 30, 2003 and 2002 are unaudited, but include all adjustments (consisting of normal recurring adjustments) which we consider necessary for a fair presentation of the financial position, operating results and cash flows for the periods presented. The condensed consolidated balance sheet at December 31, 2002 has been derived from audited financial statements.

Although we believe that the disclosures in these financial statements are adequate to make the information presented not misleading, certain information and footnote information normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission.

Results for any interim period are not necessarily indicative of results for any future interim period or for the entire year. The accompanying financial statements should be read in conjunction with the financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2002.

Certain amounts reported in previous periods have been reclassified to conform to 2003 financial statement presentation.

Stock-based compensation

In accordance with the provisions of FASB Statement No. 123, *Accounting for Stock-Based Compensation ("SFAS 123"),* Incyte has elected to continue applying the provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees ("APB 25"),* as amended by FASB Interpretation No. 44, *Accounting for Certain Transactions Involving Stock Compensation ("FIN 44"),* in accounting for our stock-based compensation plans. Accordingly, we do not recognize compensation expense for stock options granted to employees and directors when the stock option price at the grant date is equal to or greater than the fair market value of the stock at that date.

The fair value of each option and employee purchase right was estimated at the date of grant using a Black-Scholes option-pricing model, assuming no expected dividends and the following weighted average assumptions:

	Employee Stock Options				Employee Stock Purchase Plan			
	For the Three Months Ended June 30		For the Six Months Ended June 30		For the Three Months Ended June 30		For the Six Months Ended June 30	
	2003	2002	2003	2002	2003	2002	2003	2002
Average risk-free interest rates	2.39%	3.78%	3.06%	3.80%	1.70%	1.80%	1.70%	1.80%
Average expected life (in years)	4.78	3.24	3.72	3.51	1.37	0.50	1.37	0.50
Volatility	91%	87%	84%	87%	108%	84%	108%	84%

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options which have no restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because our employee stock options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of our employee stock options.

For purposes of disclosures pursuant to SFAS 123, as amended by FASB Statement No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure* ("SFAS 148"), the estimated fair value of options is amortized over the options' vesting period. The following illustrates the pro forma effect on net loss and net loss per share as if we had applied the fair value recognition provisions of SFAS 123 (in thousands, except per share amounts):

	For the Three Months Ended June 30		For the Six Months Ended June 30	
	2003	2002	2003	2002
Net loss, as reported	$ (26,900)	$ (17,541)	$ (82,684)	$ (30,982)
Add: Stock-based employee compensation	498	1,493	999	557
Deduct: Total stock-based employee compensation determined under the fair value-based method for all awards	(3,952)	(5,405)	(5,607)	(10,313)
Pro forma net loss	$ (30,354)	$ (21,453)	$ (87,292)	$ (40,738)
Net loss per share:				
Basic and diluted net loss per share-as reported	$ (0.37)	$ (0.26)	$ (1.17)	$ (0.46)
Basic and diluted net loss per share-as SFAS 123 adjusted	$ (0.42)	$ (0.32)	$ (1.24)	$ (0.61)

We also record, and amortize over the related vesting periods, deferred compensation representing the difference between the price per share of stock issued or the exercise price of stock options granted and the fair value of our common stock at the time of issuance or grant.

3. Property and equipment

Property and equipment consisted of (in thousands):

	June 30, 2003	December 31, 2002
Office equipment	$ 4,577	$ 4,968
Laboratory equipment	25,082	24,489
Computer equipment	63,221	70,817
Leasehold improvements	30,215	31,010
	123,095	131,284
Less accumulated depreciation and amortization	(91,074)	(99,497)
	$ 32,021	$ 31,787

4. Long-term investments

We have made equity and debt investments in a number of companies whose businesses may be complementary to our business; most of these investments were made in connection with the establishment of a collaborative arrangement between us and the investee company. We account for our investments in publicly-traded companies in accordance with FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*. These investments are classified as available-for-sale and are adjusted to their fair value each period based on their traded market price with any adjustments being recorded in accumulated other comprehensive income (loss) as a separate component of stockholders' equity. Investments in privately-held companies are carried at cost. We own less than 20% of the outstanding voting stock of each long-term investment and do not have the ability to exert significant influence over these investments.

Investment impairment charges are recorded when we believe that an investment has experienced a decline in value that is other than temporary. The determination of whether an impairment is other than temporary consists of a review of qualitative and quantitative factors by members of senior management. Generally, declines that persist for six months or more are considered

other than temporary. We use the best information available in these assessments; however, the information available may be limited. These determinations involve significant management judgment, and actual amounts realized for any specific investment may differ from the recorded values. Future adverse changes in market conditions or poor operating results of underlying investments could result in additional impairment charges

As of June 30, 2003, our long-term investments consisted of equity investments in privately-held companies. For the three and six months ended June 30, 2003, we recorded an impairment charge of $0.8 million and $2.7 million, respectively. Impairment charges are included in "Interest and other income (expense), net."

One long-term investment comprised 48% and 42% of the total long-term investments balance at June 30, 2003 and December 31, 2002, respectively. The activity on our long-term investments, in any given quarter, may result in gains or losses on sales or impairment charges. As of June 30, 2003, long-term investments represent 6% of our total assets. Amounts realized upon disposition of these investments may be different from their carrying value.

5. Intangible and other assets

Intangible and other assets, net, totaling $28.5 million and $26.1 million at June 30, 2003 and December 31, 2002, respectively, consisted of $23.2 million and $20.1 million of intangible assets, net, at June 30, 2003 and December 31, 2002, respectively, and $5.3 million and $6.0 million of other assets at June 30, 2003 and December 31, 2002, respectively. Intangible assets consisted of the following (in thousands):

	June 30, 2003			December 31, 2002		
	Gross Carrying Amount	Accumulated Amortization	Other Intangibles, Net	Gross Carrying Amount	Accumulated Amortization	Other Intangibles, Net
Capitalized patents	$18,321	$ (2,447)	$ 15,874	$14,465	$ (1,582)	$ 12,883
Capitalized software	9,096	(3,872)	5,224	7,638	(2,797)	4,841
Acquired database technology	2,638	(613)	2,025	2,638	(429)	2,209
Other intangibles	362	(243)	119	362	(171)	191
Total	$30,417	$ (7,175)	$ 23,242	$25,103	$ (4,979)	$ 20,124

Costs of patents and patent applications are capitalized and amortized on a straight-line basis over their estimated useful lives of approximately ten years in accordance with the provisions of Accounting Principles Board Opinion No. 17, *Intangible Assets ("APB 17")*. Capitalized software costs, which consist of software development costs incurred in developing certain products once the technological feasibility of the products has been determined, are recorded in accordance with FASB Statement No. 86, *Accounting for the Costs of Computer Software to be Sold, Leased or Otherwise Marketed ("SFAS 86"),* and are amortized on a straight-line basis over the estimated useful life of three years. Acquired database technology and other intangible assets recorded in conjunction with the acquisition of Proteome, Inc. are being amortized using the straight-line method over estimated useful lives ranging from three to eight years. Amortization expense related to intangibles was $1.2 million and $2.3 million for the three and six months ended June 30, 2003, respectively.

6. Convertible subordinated notes

In February 2000, in a private placement, Incyte issued $200.0 million of convertible subordinated notes, which resulted in net proceeds of approximately $196.8 million. The notes bear interest at 5.5%, payable semi-annually on February 1 and August 1, and are due February 1, 2007. The notes are subordinated to all senior indebtedness, as defined. The notes can be converted at the option of the holder at an initial conversion price of $67.42 per share, subject to adjustment. We may, at our option, redeem the notes at any time at specific prices. Holders may require us to repurchase the notes upon a change in control, as defined. During the three and six month periods ended June 30, 2003, no notes were repurchased in the open market. During the three and six month periods ended June 30, 2002, we repurchased on the open market and retired $6.7 million in face value of convertible subordinated notes. A gain of $1.9 million was recognized on these transactions for the three and six months ended June 30, 2002. All gains on repurchase of convertible subordinated notes are presented as "Gain on repurchase of convertible subordinated notes."

In July 2003, we repurchased on the open market and retired $3.8 million in face value of convertible subordinated notes and recognized a gain of $0.7 million.

7. Revenue recognition

Revenues are recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed and determinable and collectibility is reasonably assured. We enter into various types of agreements

for access to our databases of information, use of our intellectual property and sales of our custom products and services. Revenue is deferred for fees received before earned or until no further obligations exist.

Revenues received from agreements in which collaborators paid with equity securities in their company were $0 million for both the three and six months ended June 30, 2003, respectively, and $0 million and $2.4 million for the three and six months ended June 30, 2002, respectively. Additionally, revenues received from agreements in which we concurrently invested funds in the collaborator's equity securities were $0.2 million and $0.4 million for the three and six months ended June 30, 2003, respectively, and $0.2 million and $0.4 million for the corresponding periods in 2002.

Revenues recognized from transactions in which there was originally a concurrent commitment entered into by us to purchase goods or services for the three and six months ended June 30, 2003 were $0.8 million and $1.9 million, respectively. No new transactions in which there was a concurrent commitment by us to purchase goods or services were entered into during the three and six months ended June 30, 2003. Of commitments made in prior periods, we expensed $3.4 million and $6.2 million for the three and six months ended June 30, 2003, respectively, and $5.5 million and $11.6 million for the corresponding periods in 2002.

The above transactions were recorded at fair value in accordance with our revenue recognition policy.

For the three and six months ended June 30, 2003, one collaborator contributed 15% and 10% of total revenues, respectively. A different collaborator contributed 17% and 9% of total revenues for the three and six month periods ended June 30, 2002, respectively.

Two collaborators comprised 57% of the accounts receivable balance at June 30, 2003. Three collaborators comprised 45% of the accounts receivable balance at December 31, 2002.

8. Net loss per share

For all periods presented, both basic and diluted net loss per common share are computed by dividing the net loss by the number of weighted average common shares during the period. Stock options and common shares issuable upon conversion of our subordinated notes were excluded from the computation of diluted net loss per share, as their effect was antidilutive for all periods presented. The common stock equivalents that were excluded from the diluted net loss per share computation are as follows:

	June 30,	
	2003	2002
Outstanding stock options	9,013,373	9,671,427
Common shares issuable upon conversion of subordinated notes	2,525,956	2,525,956
Total common stock equivalents excluded from diluted net loss per share computation	11,539,329	12,197,383

9. Segment reporting

Our operations are treated as one operating segment, in accordance with FASB Statement No. 131 ("SFAS 131"). We recorded revenue from customers throughout the United States and in Austria, Belgium, Canada, Denmark, France, Germany, India, Israel, Japan, Sweden, Switzerland, and the United Kingdom. Export revenues for the three and six months ended June 30, 2003 were $3.5 million and $7.1 million, respectively, and $8.3 million and $20.1 million for the three and six months ended June 30, 2002, respectively.

10. Related party transactions

Incyte has entered into certain related party transactions as defined by FASB Statement No. 57, *Related Party Disclosures ("SFAS 57")*. In each of these transactions in which a director of Incyte is in some way affiliated with the other party to the transaction, such director has recused himself from voting on the related party transaction. Revenues from companies considered to be related parties as defined by SFAS 57 were $0.2 million and $0.5 million, for the three months ended June 30, 2003 and 2002, respectively and $0.4 million and $1.2 million for the six months ended June 30, 2003 and 2002, respectively. At June 30, 2003 and December 31, 2002, accounts receivable from related parties were $0.2 million and $0.6 million, respectively, and loans receivable from related parties were $0.6 million and $2.3 million, respectively. At June 30, 2003 and December 31, 2002, prepaid expenses to related parties were $1.0 million and $2.1 million, respectively.

11. Other expenses

Costs associated with restructuring activities initiated prior to December 31, 2002 are accounted for in accordance with EITF Issue No. 94-3 *Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring) ("EITF 94-3").* Accordingly, costs associated with such plans are recorded as other expenses in the consolidated statements of operations. Below is a summary of the activity related to other expenses recorded pursuant to EITF 94-3 for the periods in which activity related to our restructuring programs has taken place through the six months ended June 30, 2003.

2002 Restructuring

(in thousands)	Nature of Charges	Original Charge Recorded in 2002	Accrual Balance as of December 31, 2002	2003 Charges to Operations	2003 Charges Utilized	Accrual Balance as of June 30, 2003
Restructuring expenses:						
Workforce reduction	Cash	$ 7,325	$ 4,867	$ —	$ (4,867)	$ —
Equipment and other assets	Non-cash	8,662	—	—	—	—
Lease commitments and other restructuring charges	Cash/Non-cash	17,924	18,504	508	(2,655)	16,357
Other expenses		$ 33,911	$ 23,371	$ 508	$ (7,522)	$ 16,357

During 2002, we recognized other expenses of $33.9 million relating to restructuring programs announced in the fourth quarter of 2002. During the six months ended June 30, 2003, we recognized an additional charge of $0.5 million primarily relating to contract-related settlements and facilities lease expenses in excess of amounts originally estimated. We estimate that it may take us another twelve months to sublease or otherwise terminate the leases for the various properties that have been vacated. We may incur additional costs associated with these subleasing and lease termination activities. We utilized $4.9 million of accrued severance charges and $2.7 million of accrued facilities and other restructuring charges during the six months ended June 30, 2003. As of January 11, 2003, all affected employees had been terminated under this restructuring program.

The estimates above have been made based upon management's best estimate of the amounts and timing of certain events included in the restructuring plan that will occur in the future. It is possible that the actual outcome of certain events may differ from the estimates. Changes will be made to the restructuring accrual at the point that the differences become determinable.

2001 Restructuring and Other Impairments

(in thousands)	Nature of Charges	Original Charge Recorded in 2001	Accrual Balance as of December 31, 2002	2003 Charges to Operations	2003 Charges Utilized	Accrual Balance as of June 30, 2003
Restructuring expenses:						
Workforce reduction	Cash	$ 8,114	$ —	$ —	$ —	$ —
Equipment and other assets	Non-cash	32,629	—	—	—	—
Lease commitments and other restructuring charges	Cash/Non-cash	14,859	8,225	885	(7,453)	1,657
Subtotal		55,602	8,225	885	(7,453)	1,657
Impairment of goodwill and other intangible assets	Non-cash	68,666	—	—	—	—
Impairment of other long-lived assets	Non-cash	6,104	—	—	—	—
Other expenses		$ 130,372	$ 8,225	$ 885	$ (7,453)	$ 1,657

During 2001, we recognized other expenses of $130.4 million relating to restructuring programs and long-lived asset write-downs announced in the fourth quarter of 2001. During the six months ended June 30, 2003, we recognized an additional charge of $0.9 million primarily relating to contract-related settlements and facilities lease expenses in excess of amounts originally estimated. We estimate that it may take us another nine months to sublease or otherwise terminate the leases for the various properties that have been vacated. We may incur additional costs associated with these subleasing and lease termination activities. We utilized $7.5 million of accrued facilities and other restructuring charges during the six months ended June 30, 2003.

The estimates above have been made, based upon management's best estimate of the amounts and timing of certain events included in the restructuring plan that will occur in the future. It is possible that the actual outcome of certain events may differ from the estimates. Changes will be made to the restructuring accrual at the point that the differences become determinable.

12. Acquisition of Maxia Pharmaceuticals, Inc.

In November 2002, we entered into an agreement to acquire Maxia Pharmaceuticals, Inc. ("Maxia"), a privately-held company based in San Diego, California. On February 18, 2003, the acquisition was completed. Maxia was a drug discovery and development company that specialized in small molecule drugs targeting diabetes and other metabolic disorders, cancer, inflammatory diseases and heart disease. We acquired Maxia to create a more advanced and robust pipeline of discovery projects and product candidates and to further our drug discovery and development efforts.

The transaction was accounted for as an asset purchase pursuant to FASB 141, *Business Combinations*, as Maxia had not commenced its planned principal operations as described in EITF 98-3, *Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business*. The purchase price was preliminarily allocated as follows:

(in thousands)	
Net tangible liabilities assumed	$ (722.7)
In-process research and development	28,115.7
Total purchase price	$27,393.0

The total purchase price of approximately $27.4 million consists of approximately 4,476,092 shares of Incyte common stock with a fair value of $17.5 million, cash of approximately $5.6 million (consisting of $4.1 million cash paid to Maxia stockholders and a $1.5 million note payable from Maxia, issued in August 2002, that was applied to this transaction), direct transaction costs of $1.4 million and additional restructuring costs incurred as part of the acquisition of $2.9 million, in accordance with EITF Issue No. 95-3, *Recognition of Liabilities in Connection with a Purchase Business Combination ("EITF 95-3").* The value of the 4,476,092 shares of Incyte common stock was based on a per share price of $3.91. For valuation purposes, this per share price of Incyte common stock was determined as the average closing market price for the five trading days preceding February 18, 2003, the date on which the number of shares to be issued became determinable. As of June 30, 2003, 3,600,820 shares have been issued and $3.1 million have been paid to the former Maxia stockholders. Estimated direct transaction costs consist of fees for attorneys, accountants and filing costs. Of the total purchase price, up to 437,636 shares of our common stock and $500,000 in cash are payable to former Maxia stockholders on the second anniversary of the consummation of the merger and up to 437,636 shares of our common stock and $500,000 in cash are payable to former Maxia stockholders on the third anniversary of the consummation of the merger. We have paid these amounts and issued these shares into a third party escrow account.

The purchase price was allocated to the tangible assets acquired and liabilities assumed on the basis of their respective fair values on the acquisition date and to in-process research and development expense. Tangible assets acquired and liabilities assumed consist of cash of $0.5 million, prepaid expenses of $0.4 million, accounts payable of $0.8 million and accrued liabilities of $0.8 million. We recorded a charge at the time of acquisition for the purchase of in-process research and development expense ("IPRD") that is presented as a separate component of operating expense; the valuation represents the estimated fair value to incomplete projects, that at the time of acquisition, had no alternative future use and for which technological feasibility had not been established. Incyte acquired three IPRD compounds that are in stages ranging from discovery to preclinical phases; management has determined that each of these projects would require significant further development before they would be available for release to customers. The preliminary allocations above are based on management's estimate of the purchase accounting at the date of acquisition and estimates will continue to be refined and the corresponding adjustments will be reflected in in-process research and development expenses. The purchase price allocation is subject to revision as management obtains additional information.

In accordance with EITF 95-3, we recorded a $2.9 million charge related to restructuring costs for Maxia, which consisted of workforce reductions and consolidation of facilities. We recorded employee termination costs of approximately $0.8 million for 28 employee positions. The job eliminations were completed in July 2003. We also recorded restructuring costs related to lease payments for property that has been vacated and other costs of $2.0 million. We estimate that it may take up to eighteen months to sublease or otherwise terminate the lease for the property in San Diego, California. During the six months ended June 30, 2003, we have utilized $0.3 million of accrued severance charges and $0.1 million of accrued facilities and other restructuring costs.

We also recorded transaction costs related to the acquisition of $1.4 million and have utilized $0.9 million during the six months ended June 30, 2003.

Below is a summary of activity related to accrued acquisition costs for the six months ended June 30, 2003:

(in thousands)	Nature of Charge	Original Accrual	2003 Additions	2003 Accrual Utilized	Accrual Balance as of June 30, 2003
Accrued acquisition costs:					
Workforce reduction	Cash	$ 845	$ —	$ (332)	$ 513
Lease commitments and other restructuring costs	Cash	2,016	—	(148)	1,868
Transaction fees	Cash	1,450	—	(867)	583
Accrued acquisition costs		$ 4,311	$ —	$ (1,347)	$ 2,964

The estimates above have been made based upon management's best estimate of the amounts and timing of certain events that will occur in the future. It is possible that the actual outcome of certain events may differ from the estimates. Changes will be made to this accrual at the point that the differences become determinable.

The condensed consolidated financial statements include the operating results of Maxia from February 18, 2003, the date of acquisition. Pro forma results of operations have not been presented because the effects of this acquisition were not material on either an individual or aggregate basis and the acquisition was accounted for as an acquisition of assets.

Under the merger agreement, former Maxia stockholders have the right to receive certain earn out amounts of up to a potential aggregate amount of $14.0 million upon the occurrence of certain milestones set forth in the merger agreement. Twenty percent of each earn out payment, if earned, will be paid in cash and the remaining eighty percent will be paid in shares of our common stock such that an aggregate of $2.8 million in cash and $11.2 million in our common stock could potentially be paid pursuant to the earn out milestones. The milestones occur as Maxia products enter various stages of human clinical trials and may be earned at any time prior to the tenth anniversary of the consummation of the merger. In any event, no more than 13,531,138 shares of our common stock may be issued to former Maxia stockholders in the aggregate pursuant to the merger agreement.

13. Litigation

Invitrogen

On October 17, 2001, Invitrogen Corporation filed a complaint for patent infringement against Incyte in the United States District Court for the District of Delaware. On November 21, 2001, we filed our answer to Invitrogen's complaint. In addition, we asserted seven counterclaims against Invitrogen seeking declaratory relief with respect to the patents at issue, implied license, estoppel, laches, and patent misuse. We are also seeking our fees, costs, and expenses. Invitrogen filed its answer to our counterclaims on January 9, 2002. On February 25, 2003, we added a counterclaim for unfair business practices. On June 24, 2003, the Court stayed all proceedings pending final disposition of the appeal in a related case, or entry of any order in any other action invalidating the same patents that are asserted in this case.

On November 21, 2001, we filed a complaint against Invitrogen, amended on December 21, 2001 and March 7, 2002, in the United States District Court for the Southern District of California alleging infringement of thirteen of its patents. Eight of the asserted patents are gene patents. Three of the patents relate to RNA amplification and gene expression. Two of the patents relate to methods of fabricating microarrays of biological samples. The complaint seeks a permanent injunction enjoining Invitrogen from further infringement of the patents at issue, damages for Invitrogen's conduct, as well as our fees, costs, and interest. We further seek triple damages based on Invitrogen's willful infringement of our patents. On April 2, 2002, Invitrogen filed its answer to our complaint and brought counterclaims against us seeking declaratory judgments that the patents in suit are invalid and not infringed. Invitrogen also pled, but later withdrew, its affirmative defense and counterclaim alleging that one of our patents is unenforceable. On April 25, 2002, we filed our answer denying Invitrogen's counterclaims. Invitrogen has represented to the Court that its past sales of the eight GeneStorm cDNA clones charged with infringement of eight of our patents were not substantial and that it no longer sells these products. On July 2, 2003, the Court entered a stipulated two-month stay of all proceedings in this action.

We believe we have meritorious defenses and intend to defend the suit brought by Invitrogen vigorously. However, our defenses may be unsuccessful. At this time, we cannot reasonably estimate the possible range of any loss or damages resulting from these suits and counterclaims due to uncertainty regarding the ultimate outcome. In addition, regardless of the outcome, we expect that the Invitrogen litigation will result in future costs to us, which could be substantial. Further, there can be no assurance that any license that may be required as a result of this litigation will be available on commercially acceptable terms, if at all.

PART I: FINANCIAL INFORMATION

Item 2:

Management's Discussion And Analysis Of Financial Condition And Results Of Operations

This Management's Discussion and Analysis of Financial Condition and Results of Operations as of June 30, 2003 and for the three and six month periods ended June 30, 2003 and 2002 should be read in conjunction with the unaudited condensed consolidated financial statements and notes thereto set forth in Item 1 of this report and the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended December 31, 2002.

When used in this discussion, the words "expects," "believes," "anticipates," "estimates," "could," "intends," and similar expressions are intended to identify forward-looking statements. These statements, which include statements as to the impact of certain critical accounting policies on our financial results; expected expenses and expenditure levels; expected revenues and sources of revenues; expected uses of net cash; expected losses, net losses and net loss levels; expected expenditures including expenditures on intellectual property and research and development; the offset of profits from certain products by other expenditures; our plans to manage our information products to be cash flow positive; the adequacy of capital resources; the need to raise additional capital; the expected effect of our contractual obligations on our future liquidity and cash flow; our plans to reduce expenditures in 2003 through spending reductions, workforce reductions and office consolidations in conjunction with the 2002 restructuring program; our long-term investments, including anticipated expenditures, losses and expenses; the application of United States Patent and Trademark Office utility guidelines to our gene patent applications; costs associated with prosecuting, defending and enforcing patent claims and other intellectual property rights; the size of our intellectual property portfolio and its competitive position; our strategy with regard to protecting our intellectual property; the effect of pharmaceutical and biotechnology company consolidations, including reduced research and development spending and pricing constraints by pharmaceutical and biotechnology customers and the softening of the market for genomic information and the market for our information products; the effect of our pharmaceutical and biotechnology customers' focus on late stage research and clinical products on the pricing of, and the length of contractual commitment for, our information products; the expected growth of, and our ability to manage expansion of, our therapeutic discovery and development operations, including operations in multiple locations; future required expertise relating to clinical trials, manufacturing, sales and marketing and for licenses to technology rights; the commercial availability of drugs resulting from our research; and our ability to obtain and maintain product liability insurance; are subject to risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, but are not limited to, those risks discussed below, as well as the extent of utilization of genomic information by the biotechnology and pharmaceutical industries; actual and future consolidations of pharmaceutical and biotechnology companies; continuing trends with respect to reduced pharmaceutical and biotechnology research spending; our ability to manage our information products to be cash flow positive; risks relating to the development of new products and their use by our potential collaborators; the impact of technological advances and competition; unanticipated delays in research and development efforts; the result of further research; our ability to consolidate our facilities and to exit and close facilities upon anticipated timelines; our ability to deliver products and services to our customers effectively with reduced headcount and management and key employee diversion; our ability to obtain and retain customers; competition from other entities; early termination of a database collaboration agreement or failure to renew an agreement upon expiration; decreasing database revenues; the cost of accessing, licensing or acquiring technologies developed by other companies; significant delays or costs in obtaining regulatory approvals; failure to obtain regulatory approval; uncertainty as to the scope of coverage, enforceability or commercial protection from patents that issue on gene and other discoveries; our ability to obtain patent protection for our discoveries and to continue to be effective in expanding our patent coverage; the impact of changing laws on our patent portfolio; developments in and expenses relating to litigation; the results of businesses in which we hold equity; and the matters discussed in "Factors That May Affect Results." These forward-looking statements speak only as of the date hereof. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

In the section of this report entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Factors That May Affect Results," all references to "Incyte," "we," "us," or "our" mean Incyte Corporation and our subsidiaries.

Incyte, LifeSeq, BioKnowledge and ZooSeq are our registered trademarks. We also refer to trademarks of other corporations and organizations in this document.

Overview

Incyte is a drug discovery company that is using its expertise in medicinal chemistry and molecular, cellular and in vivo biology to discover and develop novel therapeutics. We believe we have the largest compilation of information regarding full-length human genes and the proteins they encode and also the largest commercial portfolio of issued United States patents covering such genes and proteins. We use, license and sell this intellectual property, as well as market our genomic and proteomic information, to many of the world's leading pharmaceutical and biotechnology companies and academic research centers. We have assembled an experienced and talented drug discovery team that is identifying potential new drug therapies for cancer, inflammatory diseases and other medical conditions.

We were incorporated in Delaware in April 1991 and, until 2001, devoted substantially all of our resources to the development, marketing and sales of genomics technologies and products to the biotechnology and pharmaceutical industries and research and academic institutions to aid in better and faster prevention, diagnosis and treatment of disease. Our products and services included databases, bioreagents, custom sequencing, gene expression, single nucleotide polymorphism, or SNP, discovery, and other services. Over time, we also increased our investments in growing our intellectual property estate to protect our proprietary information as well as our internal and collaborative efforts to identify and validate drug targets.

During 2001, we increased our focus on our therapeutic discovery and development program, and we exited the following activities: microarray products and related services, genomic screening products and services, public domain clone products and related services, contract sequencing services, transgenic products and services and SNP discovery services.

Our business is now focused on our therapeutic discovery and development programs and our information products. Our current information products include databases, intellectual property licensing, funded research and cDNA clones. The fees and the period of access to our database information are negotiated independently with each customer. In addition to providing access to pharmaceutical and biotechnology customers, we also provide access to our database to third parties who use the database to develop genomic tools, such as microarrays that require genomic content, which they in turn sell to pharmaceutical and biotechnology researchers. Fees payable by pharmaceutical and biotechnology collaborators for our information products also generally consist of non-exclusive or exclusive fees corresponding to patent rights on proprietary genes and proteins. We may also receive future milestone and royalty payments from collaborators from the development and sale of their products derived from our technology and database information.

We expect that the overall market for our information products will continue to be competitive based on softening of the market for genomic information, shrinking research budgets of our current and potential customers and industry consolidation. Revenue trends indicate that subscribers are being more cautious with their spending to focus more of their resources on late stage research and clinical products than in the past, and this has adversely impacted renewals and the pricing of, and the length of the contractual commitment for, our information products. We expect this trend to continue through the remainder of 2003 and that revenues in 2003 will be lower than those recognized in the prior year.

We intend to manage our information products to be cash flow positive. Our ability to earn revenues and successfully manage our information products on a cash flow positive basis depends, in large part, on our ability to attract new customers and retain new and existing customers for our information products in an increasingly competitive market environment. Further, we have only received limited royalty revenues to date, and do not expect to receive significant royalty or other revenues from development and commercialization by our customers using our information products for several years, if at all. Revenues from our customers may be subject to significant fluctuation in both timing and amount and, therefore, our results of operations for any period may not be comparable to the results of operations for any other period.

In conjunction with the 2002 restructuring program, we expect to reduce certain expenses through a combination of decreased spending, job reductions and office consolidations and continued efforts to improve operational efficiencies. The restructuring program has had little impact on our therapeutic discovery and development programs as we intend to continue to invest in research and development for our therapeutic discovery and development efforts. We expect these expenses to continue to increase in 2003 and that these increases will partially offset our expected expense reductions from the 2002 restructuring program.

We anticipate incurring additional losses for the next several years as we expand our therapeutic drug discovery and development programs. We also expect that losses will fluctuate from quarter to quarter and that such fluctuations may be substantial. We do not expect to generate revenues from our therapeutic discovery and development efforts for several years, if at all. If we are unable to successfully develop and market pharmaceutical products over the next several years, our business, financial condition and results of operations would be adversely impacted.

Our long-term investments, as of June 30, 2003, consists of equity investments in privately-held companies; most of these investments were made in connection with the establishment of a collaborative arrangement between us and the investee company. Many of these companies are still in the start-up or development stage. Our investments in these companies are

inherently risky because the technologies or products they have under development are typically in the early stages and may never become successful. The market values of many of these investments can fluctuate significantly. Current market conditions may cause us to write-down the value of our investments which could result in future charges to our earnings. The determination of investment impairment involves significant management judgment, and actual amounts realized for any specific investment may differ from recorded values. Because the market value of long-term investments that we hold can fluctuate significantly, and such fluctuations are highly variable and not within our control, any gains or losses related to long-term investments have not been included in earnings estimates for 2003.

During 2002 and 2001, we reported charges of $37.3 million and $130.4 million, respectively, relating to restructuring programs and long-lived asset write-downs announced in the fourth quarter of each year. During the six months ended June 30, 2003, we recorded an additional charge of $0.5 million and $0.9 million related to the 2002 and 2001 restructurings, respectively. A discussion of each of these restructuring programs follows:

During 2001, we exited certain product lines and, as a result of exiting these activities, we closed certain of our facilities in Fremont, California, Palo Alto, California, St. Louis, Missouri and Cambridge, United Kingdom. In addition to the product lines exited, we made infrastructure and other personnel reductions at our locations resulting in an aggregate workforce reduction of approximately 400 employees. A charge for the 2001 restructuring program and impairment of long-lived assets of $130.4 million was recorded in the fourth quarter of 2001 as a result of the change in focus. This charge was comprised of the following items: $68.7 million—goodwill and intangibles impairment; $55.6 million—restructuring charges (including $32.6 million in equipment and other assets impaired) and $6.1 million—impairment of a long-lived asset. Revenues from exited product lines for the years ended 2002 and 2001 were $3.6 million and $45.3 million, respectively. Additional charges for restructuring expenses of $3.4 million were recorded in 2002 and $0.9 million for the six months ended June 30, 2003 primarily for contract-related settlements, impairment of long-lived assets and facilities lease expenses in excess of estimated amounts, offset by the release of other restructuring accruals in excess of actual expenses.

In November 2002, we announced plans to reduce our expenditures, primarily in research and development, through a combination of spending reductions, workforce reductions and office consolidations. The expense reduction plan included elimination of approximately 37% of our workforce in Palo Alto, California, Beverly, Massachusetts, and Cambridge, England and consolidation of our office and research facilities in Palo Alto, California. As a result of these actions, we incurred a charge of $33.9 million during the fourth quarter of 2002. For the six months ended June 30, 2003, we recorded an additional charge of $0.5 million relating to contract-related settlements and facilities lease expenses in excess of amounts originally estimated.

In November 2002, we entered into an agreement to acquire Maxia Pharmaceuticals, Inc. (“Maxia”), a privately-held company based in San Diego, California. On February 18, 2003, the acquisition was completed. Maxia was a drug discovery and development company that specialized in small molecule drugs targeting diabetes and other metabolic disorders, cancer, inflammatory diseases and heart disease. We acquired Maxia to create a more advanced and robust pipeline of discovery projects and product candidates and to further our drug discovery and development efforts.

The transaction was accounted for as an asset purchase pursuant to FASB 141, *Business Combinations*, as Maxia had not commenced its planned principal operations as described in EITF 98-3, *Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business*. The purchase price was preliminarily allocated as follows:

(in thousands)	
Net tangible liabilities assumed	$ (722.7)
In-process research and development	28,115.7
Total purchase price	$27,393.0

The total purchase price of approximately $27.4 million consists of approximately 4,476,092 shares of Incyte common stock with a fair value of $17.5 million, cash of approximately $5.6 million (consisting of $4.1 million cash paid to Maxia stockholders and a $1.5 million note payable from Maxia, issued in August 2002, that was applied to this transaction), direct transaction costs of $1.4 million and additional restructuring costs incurred as part of the acquisition of $2.9 million, in accordance with EITF Issue No. 95-3, *Recognition of Liabilities in Connection with a Purchase Business Combination (“EITF 95-3”).* The value of the 4,476,092 shares of Incyte common stock was based on a per share price of $3.91. For valuation purposes, this per share price of Incyte common stock was determined as the average closing market price for the five trading days preceding February 18, 2003, the date on which the number of shares to be issued became determinable. As of June 30, 2003, 3,600,820 shares have been issued and $3.1 million have been paid to the former Maxia stockholders. Estimated direct transaction costs consist of fees for attorneys, accountants and filing costs. Of the total purchase price, up to 437,636 shares of our common stock and $500,000 in cash are payable to former Maxia stockholders on the second anniversary of the consummation of the merger and up to 437,636 shares of our common stock and $500,000 in cash are payable to former Maxia stockholders on the third anniversary of the consummation of the merger. We have paid these amounts and issued these shares into a third party escrow account.

The purchase price was allocated to the tangible assets acquired and liabilities assumed on the basis of their respective fair values on the acquisition date and to in-process research and development expense. Tangible assets acquired and liabilities assumed consist of cash of $0.5 million, prepaid expenses of $0.4 million, accounts payable of $0.8 million and accrued liabilities of $0.8 million. We recorded a charge at the time of acquisition for the purchase of in-process research and development expense ("IPRD") that is presented as a separate component of operating expense; the valuation represents the estimated fair value to incomplete projects, that at the time of acquisition, had no alternative future use and for which technological feasibility had not been established. Incyte acquired three IPRD compounds that are in stages ranging from discovery to preclinical phases; management has determined that each of these projects would require significant further development before they would be available for release to customers. The preliminary allocations above are based on management's estimate of the purchase accounting at the date of acquisition and estimates will continue to be refined and the corresponding adjustments will be reflected in in-process research and development expenses. The purchase price allocation is subject to revision as management obtains additional information.

In accordance with EITF 95-3, we recorded a $2.9 million charge related to restructuring costs for Maxia, which consisted of workforce reductions and consolidation of facilities. We recorded employee termination costs of approximately $0.8 million for 29 employee positions. The terminations were completed in July 2003. We also recorded restructuring costs related to lease payments for property that has been vacated and other costs of $2.0 million. We estimate that it may take up to eighteen months to sublease or otherwise terminate the lease for the property in San Diego, California. During the six months ended June 30, 2003, we have utilized $0.3 million of accrued severance charges and $0.1 million of accrued facilities and other restructuring costs.

We also recorded transaction costs related to the acquisition of $1.4 million and have utilized $0.9 million during the six months ended June 30, 2003.

Below is a summary of activity related to accrued acquisition costs for the six months ended June 30, 2003:

(in thousands)	Nature of Charge	Original Accrual	2003 Additions	2003 Accrual Utilized	Balance as of June 30, 2003
Accrued acquisition costs:					
Workforce reduction	Cash	$ 845	$ —	$ (332)	$ 513
Lease commitments and other restructuring costs	Cash	2,016	—	(148)	1,868
Transaction fees	Cash	1,450	—	(867)	583
Accrued acquisition costs		$ 4,311	$ —	$ (1,347)	$ 2,964

The estimates above have been made based upon management's best estimate of the amounts and timing of certain events that will occur in the future. It is possible that the actual outcome of certain events may differ from the estimates. Changes will be made to this accrual at the point that the differences become determinable.

The condensed consolidated financial statements include the operating results of Maxia from February 18, 2003, the date of acquisition. Pro forma results of operations have not been presented because the effects of this acquisition were not material on either an individual or aggregate basis and the acquisition was accounted for as an acquisition of assets.

Under the merger agreement, former Maxia stockholders have the right to receive certain earn out amounts of up to a potential aggregate amount of $14.0 million upon the occurrence of certain milestones set forth in the merger agreement. Twenty percent of each earn out payment, if earned, will be paid in cash and the remaining eighty percent will be paid in shares of our common stock such that an aggregate of $2.8 million in cash and $11.2 million in our common stock could potentially be paid pursuant to the earn out milestones. The milestones occur as Maxia products enter various stages of human clinical trials and may be earned at any time prior to the tenth anniversary of the consummation of the merger. In any event, no more than 13,531,138 shares of our common stock may be issued to former Maxia stockholders in the aggregate pursuant to the merger agreement.

Critical Accounting Policies and Estimates

We believe the following critical accounting policies affect the more significant judgments and estimates used in the preparation of our condensed consolidated financial statements:

- Revenue recognition
- Valuation of long-lived assets
- Accounting for long-term investments
- Restructuring charges

Revenue Recognition. Revenues are recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed and determinable and collectibility is reasonably assured. We enter into various types of agreements for access to our information databases, use of our intellectual property and sales of our custom products and services. Revenues are deferred for fees received before earned or until no further obligations exist.

Revenues from ongoing database agreements are recognized evenly over the access period. Revenues from licenses to our intellectual property are recognized when earned under the terms of the related agreements. Royalty revenues are recognized upon the sale of products or services to third parties by the licensee or other agreed upon terms. Revenues from custom products, such as clones and datasets, are recognized upon completion and delivery.

Revenues recognized from multiple element contracts are allocated to each element of the arrangement based on the fair values of the elements. The determination of fair value of each element is based on objective evidence from historical sales of the individual element by us to other customers. If such evidence of fair value for each element of the arrangement does not exist, all revenue from the arrangement is deferred until such time that evidence of fair value does exist or until all elements of the arrangement are delivered. In accordance with Staff Accounting Bulletin No. 101, ("SAB 101"), when elements are specifically tied to a separate earnings process, revenue is recognized when the specific performance obligation associated with the element is completed. When revenues for an element are not specifically tied to a separate earnings process, they are recognized ratably over the term of the agreement.

When contracts include non-monetary payments, the value of the non-monetary transaction is determined using the fair value of the products and services involved, as applicable. For non-monetary payments involving the receipt of equity in a public entity, the fair value is based on the traded stock price on the date revenue is earned. For non-monetary payments involving the receipt of equity in a privately-held company, fair value is determined either based on a current or recent arm's length financing by the issuer or upon an independent valuation of the issuer.

In November 2002, the Emerging Issues Task Force ("EITF") of the Financial Accounting Standards Board issued EITF 00-21, *Revenue Arrangements with Multiple Deliverables,* which addresses certain aspects of the accounting for arrangements that involve the delivery or performance of multiple products, services and/or rights to use assets. Under EITF 00-21, revenue arrangements with multiple deliverables should be divided into separate units of accounting if the deliverables meet certain criteria, including whether the fair value of the delivered items can be determined and whether there is evidence of fair value of the undelivered items. In addition, the consideration should be allocated among the separate units of accounting based on their fair values, and the applicable revenue recognition criteria should be considered separately for each of the separate units of accounting. EITF 00-21 is effective for revenue arrangements we enter into after June 30, 2003. We are currently evaluating whether EITF 00-21 will have an impact on future revenue arrangements.

Valuation of Long-Lived Assets. We assess the impairment of long-lived assets, which include property and equipment, acquisition-related intangibles and goodwill, whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Factors we consider important that could indicate the need for an impairment review include the following:

- Significant changes in the strategy of our overall business;
- Significant underperformance relative to expected historical or projected future operating results;
- Significant changes in the manner of use of the acquired assets;
- Significant negative industry or economic trends;
- Significant decline in our stock price for a sustained period; and
- Our market capitalization relative to net book value.

When we determine that the carrying value of long-lived assets may not be recoverable based upon the existence of one or more of the above indicators of impairment, in accordance with SFAS 144, we perform an undiscounted cash flow analysis to determine if impairment exists. If impairment exists, we measure the impairment based on the difference between the asset's carrying amount and its fair value.

Accounting for Long-Term Investments. We monitor our long-term investments for impairment on a periodic basis. As of June 30, 2003, our long-term investments consisted of equity investments in privately-held companies. Many of these companies are still in the start-up or development stage. Our investments in these companies are inherently risky because the technologies or products they have under development are typically in the early stages and may never become successful. Investments in publicly-traded companies are classified as available-for-sale and are adjusted to their fair value each period based on their traded market price with any adjustments being recorded in other comprehensive income. Investments in privately-held companies are carried at cost. We record an investment impairment charge when we believe that the investment has experienced a decline in value that is other than temporary. The determination of whether an impairment is other than temporary consists of a review of qualitative and quantitative factors by members of senior management. Generally, declines that persist for six months or more are considered other than temporary. We use the best information available in these assessments; however, the information available may be limited. These determinations involve significant management judgment, and actual amounts realized for any specific investment may differ from the recorded values. Future adverse changes in market conditions or poor operating results of underlying investments could result in additional impairment charges.

Restructuring Charges. The restructuring charges resulting from the 2002 and 2001 restructuring programs have been recorded in accordance with EITF Issue No. 94-3, *Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring) ("EITF 94-3")* and Staff Accounting Bulletin No. 100, *Restructuring and Impairment Charges ("SAB 100")*. Any future restructuring activities initiated after December 31, 2002 will be recorded in accordance with FASB Statement No.146, *Accounting for Costs Associated with Exit or Disposal Activities ("SFAS 146")*. Restructuring costs resulting from the Maxia acquisition have been recorded in accordance with EITF Issue No. 95-3, *Recognition of Liabilities in Connection with a Purchase Business Combination ("EITF 95-3")*. The restructuring charges are comprised primarily of costs to exit facilities, reduce our workforce, write-off fixed assets, and costs of outside services incurred in the restructuring. The workforce reduction charge was determined based on the estimated severance and fringe benefit charge for identified employees. In calculating the cost to exit the facilities, we estimated the amount to be paid in lease termination payments for each location, the future lease and operating costs to be paid until the lease is terminated, the amount, if any, of sublease receipts and real estate broker fees. This required us to estimate the timing and costs of each lease to be terminated, the amount of operating costs, and the timing and rate at which we might be able to sublease the site. To form our estimates for these costs, we performed an assessment of the affected facilities and considered the current market conditions for each site. Estimates were also used in our calculation of the estimated realizable value on equipment that is being held for sale. These estimates were formed based on recent history of sales of similar equipment and market conditions. Our assumptions on either the lease termination payments, operating costs until terminated, the offsetting sublease receipts and estimated realizable value of fixed assets held for sale may turn out to be incorrect and our actual cost may be materially different from our estimates.

Results of Operations

We recorded a net loss of $26.9 million and $82.7 million and a basic and diluted net loss per share of $0.37 and $1.17 per share, respectively, for the three and six months ended June 30, 2003, as compared to $17.5 million and $31.0 million and $0.26 and $0.46 per share in the corresponding periods in 2002.

Revenues. Revenues for the three and six months ended June 30, 2003 decreased to $11.0 million and $23.5 million, respectively, compared to $29.1 million and $58.1 million for the corresponding periods in 2002.

Revenues were derived primarily from information products. Information products include database subscriptions, licensing of our intellectual property and partner programs and represented 100% of total net revenues for the three and six months ended June 30, 2003, respectively, and 96% and 95% for the corresponding periods in 2002. The decrease in revenues from 2002 reflects a softening in the market for genomic information, a reduction in research spending by pharmaceutical and biotechnology companies due in part to consolidations within these industries, their efforts to reduce spending and the accompanying impact on renewals and the price of, and the length of contractual commitment for, our information products. Our database subscription and licensing revenue have been adversely impacted as subscribers are being more cautious with their spending than in the past. Revenues for both the three and six months ended June 30, 2003 included $0 million of revenue associated with the exited custom genomics product lines that was announced in the fourth quarter of 2001 as compared to $1.2 million and $3.2 million for the three and six months ended June 30, 2002, respectively.

Revenues received from agreements in which collaborators paid with equity securities in their company were $0 million for both the three and six months ended June 30, 2003, respectively, and $0 million and $2.4 million for the three and six months ended June 30, 2002, respectively. Additionally, revenues received from agreements in which we concurrently invested funds in the collaborator's stock were $0.2 million and $0.4 million for the three and six months ended June 30, 2003, respectively, and $0.2 million and $0.4 million for the corresponding periods in 2002.

Revenues recognized from transactions in which there was originally a concurrent commitment entered into by us to purchase goods or services for the three and six months ended June 30, 2003 were $0.8 million and $1.9 million, respectively. No transactions in which there was a concurrent commitment by us to purchase goods or services were entered into during the three

and six months ended June 30, 2003. Of commitments made in prior periods, we expensed $3.4 million and $6.2 million for the three and six months ended June 30, 2003, respectively, and $5.5 million and $11.6 million for the corresponding periods in 2002.

The above transactions were recorded at fair value in accordance with our revenue recognition policy.

Operating Expenses. Total costs and expenses for the three and six months ended June 30, 2003 were $37.9 million and $104.6 million, respectively, compared to $51.8 million and $99.7 million for the corresponding periods in 2002. In conjunction with the 2002 restructuring, we expect to reduce certain expenses through a combination of decreased spending, job reductions and office consolidations and continued efforts to improve operational efficiencies. The restructuring program has had little impact on our therapeutic discovery and development programs as we intend to continue to invest in research and development for our therapeutic discovery and development efforts. We expect these expenses to continue to increase through the remainder of 2003, and that such increases will partially offset our expected expense reductions from the 2002 restructuring program.

Research and development expenses. Research and development expenses for the three and six months ended June 30, 2003 decreased to $29.9 million and $60.1 million, respectively, compared to $37.7 million and $71.5 million for the corresponding periods in 2002. The decrease in research and development expenses was primarily the result of expenses eliminated from the restructuring programs, partially offset by increased therapeutic discovery and development expenses.

Selling, general and administrative expenses. Selling, general and administrative expenses for the three and six months ended June 30, 2003 decreased to $7.7 million and $15.1 million, respectively, compared to $12.7 million and $26.9 million for the corresponding periods in 2002. The decrease was primarily the result of expenses eliminated from the restructuring programs and decreased legal expenses, partially offset by general and administrative expenses incurred to support our therapeutic discovery and development efforts. Legal expenses related to our patent infringement lawsuits were approximately $0.7 million and $1.0 million in the three and six months ended June 30, 2003, respectively, and $1.6 million and $3.0 million in the three and six months ended June 30, 2002. Regardless of the outcome, our ongoing patent infringement litigation is expected to result in future costs to us, which could be substantial.

Purchased in-process research and development expense. Purchased in-process research and development expense for the six months ended June 30, 2003 of $28.1 million resulted from the acquisition of Maxia.

Other expenses. Other expenses for the three and six months ended June 30, 2003 of $0.3 million and $1.4 million, respectively, compared to $1.4 million and $1.4 million for the corresponding periods in 2002, represent charges recorded in connection with previously announced restructuring costs.

Interest and Other Income (Expense), Net. Interest and other income (expense), net for the three and six months ended June 30, 2003 decreased to $2.5 million and $3.7 million, respectively, from $6.6 million and $14.8 million for the corresponding periods in 2002. The decrease for the three months ended June 30, 2003 was primarily due to a decrease in cash invested, lower interest rates, $0.8 million long-term investment impairment charges in 2003, offset by increased gains on sales of securities. For the six months ended June 30, 2003, the decrease was primarily due to a decrease in cash invested, lower interest rates, $2.7 million in long-term investment impairment charges in 2003, partially offset by increased gains on sales of securities.

Interest Expense. Interest expense for the three months and six months ended June 30, 2003 of $2.4 million and $4.9 million, respectively, is consistent with the corresponding periods of 2002.

Gain on Repurchase of Convertible Subordinated Notes. The gain on repurchase of convertible subordinated notes for the three and six months ended June 30, 2002 of $1.9 million, net of $0 tax expense, was due to our repurchase of $6.7 million face value of our 5.5% convertible subordinated notes on the open market in the second quarter of 2002. In accordance with SFAS 145, all gains on the repurchase of convertible subordinated notes are presented as “Gain on repurchase of convertible subordinated notes”. There were no repurchases during the three and six months ended June 30, 2003.

Gain/(Loss) on Certain Derivative Financial Instruments, Net. Gain on derivative financial instruments for the three and six months ended June 30, 2003 of $0.1 million, and loss on derivative financial instruments for the three and six months ended June 30, 2002 of $0.6 million and $0.5 million, respectively, represent the change in fair value of certain long-term investments, specifically warrants held in other companies, in accordance with FASB Statement No. 133 (“SFAS 133”).

Provision for Income Taxes. Due to our net loss in 2003 and 2002, we had a minimal effective annual income tax rate. The income taxes for 2003 and 2002 are primarily attributable to foreign withholding taxes.

Liquidity and Capital Resources

As of June 30, 2003, we had $360.6 million in cash, cash equivalents and marketable securities, compared to $429.0 million as of December 31, 2002. We have classified all of our marketable securities as short-term, as we may choose not to hold them until maturity in order to take advantage of favorable market conditions. Available cash is invested in accordance with our investment policy's primary objectives of liquidity, safety of principal and diversity of investments.

Net cash used in operating activities was $58.4 million for the six months ended June 30, 2003 as compared to $14.8 million for the six months ended June 30, 2002. The increase was primarily due to the increase in net loss in 2003, adjusted for non-cash items such as purchased in-process research and development charge, depreciation and amortization, and impairment of long term investments, as well as higher cash usage for accrued and other current liabilities and a decrease in cash provided from accounts receivable.

Our investing activities, other than purchases, sales and maturities of marketable securities, have consisted predominantly of capital expenditures and net purchases of long-term investments. Capital expenditures for the six months ended June 30, 2003 were $7.0 million as compared to $6.7 million in the same period in 2002. The increase was primarily due to increased spending on our therapeutic discovery and development efforts. Long-term investments were $0 million and $5.0 million for the six months ended June 30, 2003 and 2002, respectively. In addition, during the six months ended June 30, 2003, we expended $4.1 million related to the acquisition of Maxia. In the future, net cash used by investing activities may fluctuate significantly from period to period due to the timing of strategic equity investments, acquisitions, including possible earn-out payments to former Maxia stockholders, capital expenditures and maturity/sales and purchases of marketable securities.

Net cash provided by financing activities was $1.0 million for the six months ended June 30, 2003 as compared to $28,000 for the six months ended June 30, 2002. Cash provided by financing activities in 2003 was primarily due to proceeds received from the issuance of common stock under our stock option and employee stock purchase plans, offset by amounts paid to repurchase shares of our common stock. In October 2002, we announced that our board of directors authorized the expenditure of up to $30.0 million to repurchase shares of our common stock in open market and privately negotiated transactions. Through June 30, 2003, we had purchased and retired 1,165,000 shares of common stock for an aggregate purchase price of $5.8 million. Net cash provided by financing activities in 2002 was primarily due to the repurchase of $6.7 million face value of our 5.5% convertible subordinated notes on the open market for $4.7 million, offset by proceeds from the issuance of common stock under our stock option and employee stock purchase plans of $4.6 million. In July 2003, we repurchased on the open market, and retired $3.8 million in face value of convertible subordinated notes.

The following summarizes our future minimum long-term debt payments, future interest payments on long-term debt, and future operating lease payments for the next five fiscal years and thereafter as of June 30, 2003 and the effect those obligations are expected to have on our liquidity and cash flow in future periods (in millions):

	Total	Less Than 1 Year	Years 1–3	Years 4–5	Over 5 Years
Contractual Obligations:					
Principal on convertible subordinated debt	$170.3	$ —	$ —	$170.3	$ —
Interest on convertible subordinated debt	37.5	4.7	18.7	14.1	—
Non-cancelable operating lease obligations:					
Related to current operations	56.9	5.2	18.3	16.3	17.1
Related to vacated space	31.7	3.0	8.9	8.4	11.4
Total contractual obligations	$296.4	$ 12.9	$45.9	$209.1	$ 28.5

The amounts and timing of payments related to vacated facilities may vary based on timing of negotiation of lease terminations.

We have purchase commitments of $10.0 million at June 30, 2003, the timing of which is dependent upon provision by the vendor of products and services. Additionally, we have committed to purchase equity in certain companies when certain events occur. The total amount committed to purchase equity at June 30, 2003 was $5.0 million. These commitments are considered contingent commitments as future events must occur to cause the commitments to be enforceable.

We expect to use net cash through the remainder of 2003 as we invest in our therapeutic discovery and development programs, including improvements to our laboratory facilities; continue to invest in our intellectual property portfolio; continue to seek access to technologies through investments, research and development and new alliances, license agreements and/or acquisitions; make payments related to our restructuring programs, including possible payments related to negotiated lease terminations; make long-term investments; repurchase our convertible subordinated notes or common stock and continue to make improvements in existing and new facilities.

We believe that our existing resources will be adequate to satisfy our capital needs for at least the next twelve months. Our cash requirements depend on numerous factors, including our ability to attract and retain collaborators for our databases and other products and services; expenditures in connection with alliances, license agreements and acquisitions of and investments in complementary technologies and businesses; expenditures in connection with our recent expansion of therapeutic discovery and

development programs; competing technological and market developments; the cost of filing, prosecuting, defending and enforcing patent claims and other intellectual property rights; capital expenditures required to expand our facilities, including facilities for our therapeutic discovery and development programs; expenditures required to be made to terminate existing lease obligations; and costs associated with the integration of new operations assumed through mergers and acquisitions. Changes in our research and development or business plans or other changes affecting our operating expenses may result in changes in the timing and amount of expenditures of our capital resources.

In February 2003, we completed our acquisition of Maxia Pharmaceuticals, Inc. We paid or will pay to former Maxia stockholders up to approximately 4,476,092 shares of our common stock and $4.1 million in cash. As of June 30, 2003, 3,600,820 shares have been issued and $3.1 million have been paid to the former Maxia stockholders. Of the total consideration, up to 437,636 shares of our common stock and $500,000 in cash are payable to former Maxia stockholders on the second anniversary of the consummation of the merger and up to 437,636 shares of our common stock and $500,000 in cash are payable to former Maxia stockholders on the third anniversary of the consummation of the merger. We have paid these amounts and issued these shares into a third party escrow account. In addition, our $1.5 million note payable from Maxia, issued in August 2002, was applied to the purchase price of this transaction, we incurred direct transaction costs of $1.4 million and, as part of the acquisition, we incurred additional restructuring costs of Maxia of $2.9 million. Included in tangible assets we acquired from Maxia was cash of $0.5 million.

Under the merger agreement, former Maxia stockholders have the right to receive certain earn out amounts of up to a potential aggregate amount of $14.0 million upon the occurrence of certain milestones set forth in the merger agreement. Twenty percent of each earn out payment, if earned, will be paid in cash and the remaining eighty percent will be paid in shares of our common stock such that an aggregate of $2.8 million in cash and $11.2 million in our common stock could potentially be paid pursuant to the earn out milestones. The milestones occur as Maxia products enter various stages of human clinical trials and may be earned at any time prior to the tenth anniversary of the consummation of the merger. In any event, no more than 13,531,138 shares of our common stock may be issued to former Maxia stockholders in the aggregate pursuant to the merger agreement. None of these milestones has been achieved as of June 30, 2003.

FACTORS THAT MAY AFFECT RESULTS

RISKS RELATING TO OUR FINANCIAL RESULTS

We have had only limited periods of profitability, we expect to incur losses in the future and we may not return to profitability.

We had net losses from inception in 1991 through 1996 and in 1999 through the six months ended June 30, 2003. Because of those losses, we had an accumulated deficit of $487.7 million as of June 30, 2003. We intend to continue to spend significant amounts on new product and technology development, including the expansion of our research and development efforts for therapeutic discovery and development, the determination of the sequence of genes and the filing of patent applications regarding those gene sequences, the determination of gene functions, and our research and development alliances. As a result, we expect to incur losses in 2003. We expect to report net losses in future periods as well.

We expect that any cash flows from our information products, including our database products and our intellectual property licensing, will be more than offset by expenditures for our therapeutic discovery and development efforts. We anticipate that these efforts will increase as we focus on the studies that are required before we can sell, or license to a third party, a drug product. The development of therapeutic products will require significant expenses for research, development, testing and regulatory approvals. Unless we generate significant revenues to pay these costs, we will not return to profitability. We cannot be certain whether or when we will again become profitable because of the significant uncertainties relating to our ability to generate commercially successful drug products that will generate significant revenues.

Our operating results are difficult to predict, which may cause our stock price to decline and result in losses to investors.

Our operating results are difficult to predict and may fluctuate significantly from period to period, which may cause our stock price to decline and result in losses to investors. Some of the factors that could cause our operating results to fluctuate include:

- changes in the demand for our current and future products;
- the timing of intellectual property licenses that we may grant;
- the introduction of competitive databases or services, including databases of publicly available, or public domain, genetic information;
- the nature, pricing, length of commitments for and timing of products and services provided to our collaborators;

- our ability to compete effectively in our therapeutic discovery and development efforts against competitors that have greater financial or other resources or drug candidates that are in further stages of development;
- acquisition, licensing and other costs related to the expansion of our operations, including operating losses of acquired businesses;
- losses and expenses related to our investments;
- our ability to attract and retain key personnel;
- regulatory developments or changes in public perceptions relating to the use of genetic information and the diagnosis and treatment of disease based on genetic information;
- regulatory actions and changes related to the development of drugs;
- changes in intellectual property laws that affect our rights in genetic information that we license;
- payments of milestones, license fees or research payments under the terms of our external alliances and collaborations and our ability to monitor and enforce such payments; and
- expenses related to, and the results of, litigation and other proceedings relating to intellectual property rights, including the lawsuits filed by Invitrogen and counterclaims filed by us
- risks and costs associated with our therapeutic discovery and development efforts and with advancing candidate compounds through clinical trials.

We anticipate significant fixed expenses, due in part to our expansion of our therapeutic discovery and development programs, and our continuing investment in product development and extensive support for our database collaborators. We may be unable to adjust our expenditures if revenues in a particular period fail to meet our expectations, which would harm our operating results for that period. Forecasting operating and integration expenses for acquired businesses may be particularly difficult, especially where the acquired business focuses on technologies that do not have an established market. We believe that period-to-period comparisons of our financial results will not necessarily be meaningful. You should not rely on these comparisons as an indication of our future performance. If our operating results in any future period fall below the expectations of securities analysts and investors, our stock price will likely decline, possibly by a significant amount. In addition, if market or other economic conditions impact the stock market generally, or impact other companies in our industry, our stock price may also decline, possibly significantly.

If our long-term investments incur losses or charges, our earnings may decline or our losses may increase.

We make long-term investments in entities that complement our business. These investments may:

- often be made in securities lacking a public trading market or subject to trading restrictions, either of which increases our risk and reduces the liquidity of our investment;
- require us to record losses and expenses related to our ownership interest;
- require us to record charges related to the impairment in the value of the securities underlying our investment;
- require us to record acquisition-related charges, such as in-process research and development;
- require us to record charges related to post-acquisition impairment in the value of the acquired assets, such as goodwill or intangibles; and
- require us to invest greater amounts than anticipated or to devote substantial management time to the management of research and development or other relationships.

The market values of many of these investments can fluctuate significantly. We evaluate our long-term equity investments for impairment of their values on a quarterly basis. The volatility of the equity markets and the uncertainty of the biotechnology industry may result in fluctuations in the value of our investments in public companies. The value of our investments in private companies can fluctuate significantly. Current market conditions may cause us to write-down the value of our private company

investments. Many private companies are encountering difficulties in raising capital in the current market, and even if they are successful, subsequent rounds of financing are often at lower valuations than previous rounds. Impairment could result in future charges to our earnings. Our strategic investments may cause our earnings to decline or our losses to increase.

Our debt investments are impacted by the financial viability of the underlying companies.

We have in the past and may in the future receive debt securities in the context of entering into a collaborative or other business relationship. The ability for these debt investments to be repaid upon maturity or to have a viable resale market is dependent, in part, on the financial success of the underlying company. Should the underlying company suffer significant financial difficulty, the debt instrument could either be downgraded or, in the worst case, our investment could be worthless. This would result in our losing the cash value of the investment and incurring a charge to our statement of operations.

Our database revenues could decline due to sequences becoming publicly available.

Our competitors may discover and establish patent positions with respect to the genes in our databases. Our competitors and other entities who engage in gene discovery may make the results of their sequencing efforts publicly available. Currently, academic institutions and other laboratories participating in the Human Genome Project make their gene sequence information available through a number of publicly available databases, including the GenBank database. The public availability of these discoveries or resulting patent positions covering substantial portions of the human genome could reduce the potential value of our databases to our collaborators. Public availability of sequences could also impair our ability to realize royalties or other revenue from any commercialized products based on genetic information made public prior to our patent filings.

Because our sales cycle is lengthy, we may spend a lot of time and money trying to obtain new or renewed subscriptions to our products but may be unsuccessful, which could hurt our profitability.

Our ability to obtain new customers for information products, to enter into license agreements for our intellectual property or to obtain renewals or additions to existing database product subscriptions, depends upon prospective subscribers' perceptions that our products and services can help accelerate their drug discovery efforts. Our database and licensing sales cycle is typically lengthy because we need to educate our potential subscribers and sell the benefits of our products to a variety of constituencies within potential subscriber companies. In addition, each agreement involves the negotiation of unique terms, and we may expend substantial funds and management effort with no assurance that a new, renewed or expanded agreement will result. These expenditures, without increased revenues, will negatively impact our profitability. Consolidations of pharmaceutical companies involved in drug discovery and development as well as expenditure reductions and an increased focus by our current or potential subscribers on later stage development programs and clinical compounds have affected the timing, progress and relative success of our sales and renewal efforts. We expect that any future consolidations and reductions in research budgets will have similar effects. In addition, current or prospective subscribers may perceive us to be in competition with them given our therapeutic discovery and development efforts, which may adversely impact new sales or renewals.

We have a large amount of debt and our debt service obligations may prevent us from taking actions that we would otherwise consider to be in our best interests.

As of June 30, 2003, we had:

- total consolidated debt of $171.8 million,
- stockholders' equity of $237.4 million, and
- a deficiency of earnings available to cover fixed charges of $82.2 million for the six months ended June 30, 2003.

A variety of uncertainties and contingencies will affect our future performance, many of which are beyond our control. We may not generate sufficient cash flow in the future to enable us to meet our anticipated fixed charges, including our debt service requirements with respect to our convertible subordinated notes due 2007 that we sold in February 2000. At June 30, 2003, $170.3 million face value of those notes were outstanding. The following table shows, as of June 30, 2003, the aggregate amount of our interest payments due in each of the next five calendar years listed:

Year	Aggregate Interest
2003 (remaining)	$4,683,250
2004	9,366,500
2005	9,366,500
2006	9,366,500
2007	4,683,250

Our substantial leverage could have significant negative consequences for our future operations, including:

- increasing our vulnerability to general adverse economic and industry conditions;
- limiting our ability to obtain additional financing;
- requiring the dedication of a substantial portion of our expected cash flow to service our indebtedness, thereby reducing the amount of our expected cash flow available for other purposes, including working capital and capital expenditures;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we compete; or
- placing us at a possible competitive disadvantage compared to less leveraged competitors and competitors that have better access to capital resources.

The capital markets may not permit us to raise additional capital at the time that we require it.

We believe that we have sufficient capital to satisfy our capital needs for at least the next twelve months. However, our future funding requirements will depend on many factors and we anticipate that, at some future point, we will need to raise additional capital to fund our business plan and research and development efforts on a going-forward basis. If we require additional capital at a time when investment in biotechnology companies such as ours, or in the marketplace generally, is limited due to the then prevailing market or other conditions, we may not be able to raise such funds at the time that we desire or any time thereafter.

Additional factors which may affect our future funding requirements include:

- any changes in the breadth of our research and development programs;
- the results of research and development, preclinical studies and clinical trials conducted by us or our future collaborative partners or licensees, if any;
- the acquisition or licensing of businesses, technologies or compounds, if any;
- our ability to maintain and establish new corporate relationships and research collaborations;
- competing technological and market developments;
- the amount of revenues generated from our business activities;
- the time and costs involved in filing, prosecuting, defending and enforcing patent and intellectual property claims;
- the receipt of contingent licensing or milestone fees from our current or future collaborative and license arrangements, if established; and
- the timing of regulatory approvals.

RISKS RELATING TO OUR BUSINESS AND INDUSTRY

Our workforce reduction and next-generation information product plans may have an adverse impact on our ability to deliver our information products on time, and we may fail to meet the expectations of our customers, which could in turn negatively impact our operating results.

In November 2002, we announced a reduction of approximately 37% of our workforce, including significant personnel reductions in our information product operations, in order to reduce expenses. Many factors, such as the reallocation of responsibilities among remaining personnel, the planned consolidation of our facilities and employee morale issues, may adversely impact our ability to deliver our products in accordance with our current plans or customer expectations, cause delays in the delivery of our products, or lead us to change our information product plans, which in turn may have a negative impact on our revenues and customer relationships. In addition, we announced plans in July 2003 to introduce the next-generation information product and to further streamline our information products operations. The implementation of the expense reduction program announced in November 2002 and the information product plans announced in July 2003 may result in customer concerns regarding our future performance and our ability to meet their expectations for our products, the diversion of efforts of our executive management team and other key employees, and higher than anticipated costs, any of which may negatively impact our operating results. Further, if our information products activities are not cash flow positive in future periods, further expense reductions may be necessary which, in turn, may also have a negative impact on our operating results.

Difficulties we may encounter managing the growth of our therapeutic discovery and development efforts may divert resources and limit our ability to successfully expand our business.

Our anticipated growth in the future of our therapeutic discovery and development programs, and our establishment of those operations places a strain on our infrastructure. As those operations expand, we expect that we will need to manage multiple locations and additional relationships with various collaborative partners, suppliers and other third parties. To manage our growth effectively, we must continue to improve our operational controls, reporting systems and procedures. We may not be able to successfully implement improvements to our systems and procedures in an efficient or timely manner.

Our industry is intensely competitive, and if we do not compete effectively, our revenues may decline and our losses may increase.

We compete in markets that are new, intensely competitive, rapidly changing, and fragmented. Many of our current and potential competitors have greater financial, human and other resources than we do. If we cannot respond quickly to changing customer requirements, secure intellectual property positions, or adapt quickly and obtain access to new and emerging technologies, our revenues may decline and commercial opportunities for any of our drug products may be reduced or eliminated. Our competitors include:

- Applera Corporation,
- Gene Logic Inc.,
- pharmaceutical and biotechnology companies, and
- universities and other research institutions.

The human genome contains a finite number of genes. Our competitors may seek to identify, sequence and determine the biological function of numerous genes in order to obtain a proprietary position with respect to new genes.

In addition, we face competition from companies who are developing and may seek to develop new technologies for discovering the functions of genes, gene expression information, including microarray technologies, discovery of variations among genes and related technologies. Also, if we are unable to obtain the technology we currently use or new advanced technology on acceptable terms, but other companies are, we will be unable to compete.

We also face competition from providers of software. A number of companies have announced their intent to develop and market software to assist pharmaceutical companies and academic researchers in managing and analyzing their own genomic data and publicly available data. If pharmaceutical companies and researchers are able to manage their own genomic data, or find software solutions for managing genomic data that they find preferable to those provided by us and our collaborators, they may not subscribe to our databases.

Extensive research efforts resulting in rapid technological progress characterize the genomics industry. To remain competitive, we must continue to expand our databases, improve our software, and invest in new technologies. New developments will probably continue, and discoveries by others, or the availability of such new discoveries in the public domain, may render our services and potential products noncompetitive.

We face significant competition for our therapeutic discovery and development efforts, and if we do not compete effectively, our commercial opportunity will be reduced or eliminated.

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. Our therapeutic discovery and development efforts may target diseases and conditions that are already subject to existing therapies or that are subject to the drug discovery efforts of other entities. These competitors may develop products more rapidly or successfully than we or our collaborators are able to do. Our competitors might develop drugs that are more effective or less costly than any that are being developed by us or that would render our products obsolete and noncompetitive. In addition, our competitors may succeed in obtaining regulatory approvals for drug candidates more rapidly. Also, our competitors may obtain patent protection or other intellectual property rights that would limit our ability to develop competitive products. Any drugs resulting from our research and development efforts, or from our joint efforts with any future collaborators, might not be able to compete successfully with competitors' existing and future products or obtain regulatory approval in the United States or elsewhere.

We depend on key employees in a competitive market for skilled personnel, and the loss of the services of any of our key employees would affect our ability to achieve our objectives.

We are highly dependent on the principal members of our management, operations and scientific staff. Our product development, operations and marketing efforts could be delayed or curtailed if we lose the services of any of these people.

Our future success also will depend in part on the continued service of our executive management team, key scientific, bioinformatics and management personnel and our ability to train and retain essential scientific personnel for our therapeutic drug discovery and development programs. We experience intense competition for qualified personnel. If we are unable to continue to train and retain these personnel, we may be unable to execute our business plans successfully.

We rely on a small number of suppliers of certain products we need for our business and strategic collaborations with software providers for our information products, and if we are unable to obtain sufficient supplies, or maintain such strategic relationships, we will be unable to compete effectively.

Currently, we use gene sequencing machines supplied by Molecular Dynamics, a subsidiary of Amersham Pharmacia Biotech, Ltd., and chemicals used in the sequencing process, called reagents, supplied by Roche Bioscience and Amersham Pharmacia Biotech, Ltd. in our gene sequencing operations. If we are not able to obtain an adequate supply of reagents or other materials at commercially reasonable rates, our ability to identify genes or genetic variations would be slower and more expensive.

In addition, we rely primarily on a strategic collaboration with one software provider to provide important functionality for our products. If this collaborator suffers business difficulties, or provides functionality that does not satisfy our customers' needs, or that our customers can find less expensively elsewhere, we may spend time and money to replace the functionality, we may not be able to deliver on customer commitments, and we may be otherwise adversely affected or our customer relationships and revenues may suffer.

If the information we obtain from third-party data sources is corrupt or violates the law, our revenues and operating results could decline.

We rely on and include in our databases scientific and other data supplied by others, including publicly available information from sources such as the Human Genome Project. This data could contain errors or other defects, which could corrupt our databases. In addition, we cannot guarantee that our data sources acquired this information in compliance with legal requirements. If this data caused database corruption or violated legal requirements, we would be unable to sell subscriptions to our databases. These lost sales would harm our revenue and operating results.

Security risks in electronic commerce, unfavorable Internet regulations, or business difficulties suffered by our collaborators may deter future use of our products, which could result in a loss of revenues.

We offer several products through our website on the Internet and may offer additional products in the future. Our ability to provide secure transmissions of confidential information over the Internet may limit online use of our products and services by our database collaborators as we may be limited by our inability to provide secure transmissions of confidential information over the Internet. Advances in computer capabilities and new discoveries in the field of cryptography may compromise the security measures we use to protect our website, access to our databases, and transmissions to and from our website. If our security measures are breached, our proprietary information or confidential information about our collaborators could be misappropriated. Also, a security breach could result in interruptions in our operations. The security measures we adopt may not be sufficient to

prevent breaches, and we may be required to incur significant costs to protect against security breaches or to alleviate problems caused by breaches. Further, if the security of our website, or the website of another company, is breached, our collaborators may no longer use the Internet when the transmission of confidential information is involved. For example, recent attacks by computer hackers on major e-commerce websites and other Internet service providers have heightened concerns regarding the security and reliability of the Internet.

Because of the growth in electronic commerce, the United States Congress has held hearings on whether to further regulate providers of services and transactions in the electronic commerce market. The federal government could enact laws, rules and regulations that would affect our business and operations. Individual states could also enact laws regulating the use of the Internet. If enacted, these federal and state laws, rules and regulations could require us to change our online business and operations, which could limit our growth and our development of our online products.

Because our revenues are derived primarily from the pharmaceutical and biotechnology industries, our revenues may fluctuate substantially due to reductions and delays in research and development expenditures.

We expect that our revenues in the foreseeable future will be derived primarily from products and services provided to the pharmaceutical and biotechnology industries as well as to the academic community. Accordingly, our success will depend in large part upon the success of the companies within these industries and their demand for our products and services. Our operating results may fluctuate substantially due to reductions and delays in research and development expenditures by companies in these industries or by the academic community. These reductions and delays may result from factors such as:

- changes in economic conditions;
- consolidation in the pharmaceutical and biotechnology industries;
- changes in the regulatory environment, including governmental pricing controls, affecting health care and health care providers;
- pricing pressures;
- market-driven pressures on companies to consolidate and reduce costs; and
- other factors affecting research and development spending.

These factors are not within our control.

We are at the early stage of our therapeutic discovery and development efforts and we may be unsuccessful in our efforts.

We are in the early stage of building our therapeutic discovery and development operations. Our ability to develop and commercialize pharmaceutical products based on proteins, antibodies and other compounds will depend on our ability to:

- hire and retain key scientific employees;
- identify high quality therapeutic targets;
- identify potential therapeutic candidates;
- develop products internally;
- complete laboratory testing and human studies;
- obtain and maintain necessary intellectual property rights to our products;
- obtain and maintain necessary regulatory approvals related to the efficiency and safety of our products;
- enter into arrangements with third parties to provide services or manufacture our products on our behalf or develop efficient production facilities meeting all regulatory requirements;
- deploy sales and marketing resources effectively or enter into arrangements with third parties to provide these functions;
- lease facilities at reasonable rates to support our growth; and
- enter into arrangements with third parties to license and commercialize our products.

We have limited corporate experience with these activities and may not be successful in developing or commercializing drug products. If we choose to outsource some of these activities, we may be unable to enter into outsourcing or licensing agreements on commercially reasonable terms, or at all. In addition, if we, in the future, elect to manufacture our products in our own manufacturing facilities, those facilities will require substantial additional capital resources, and we will need to attract and retain qualified personnel to build or lease or operate any such facilities.

The success of our therapeutic discovery and development efforts may depend on our ability to find collaborators or other service providers to leverage our capabilities, and if we are unable to establish future collaborations or if these future collaborations are unsuccessful, our research and development efforts could be negatively affected.

Our strategy may depend in part upon the formation and sustainability of multiple collaborative arrangements and license agreements with third parties in the future. We may rely on these arrangements for not only financial resources, but also for expertise or economies of scale that we expect to need in the future relating to clinical trials, manufacturing, sales and marketing, and for licenses to technology rights. In order for any future collaboration efforts to be successful, we must first identify potential collaborators whose capabilities complement and integrate well with ours. Our collaborators may prove difficult to work with or less skilled than we originally expected.

It is likely that we will not be able to control the amount and timing of resources that our future corporate collaborators devote to our programs or potential products. We do not know whether our future collaborators, if any, might pursue alternative technologies or develop alternative products either on their own or in collaboration with others, including our competitors, as a means for developing treatments for the diseases targeted by collaborative arrangements with us. Conflicts also might arise with future collaborative partners concerning proprietary rights to particular compounds.

We might not be able to commercialize our therapeutic product candidates successfully, and we may spend significant time and money attempting to do so.

At the present time, we have only begun to identify potential therapeutic compounds and have yet to put them into clinical testing. Of the compounds we identify as potential therapeutic candidates, at most, only a few are statistically likely to lead to successful therapeutic development efforts. We expect drugs that result from our research will not be commercially available for a number of years, if at all. Commercialization of any product candidates that we identify and develop depends on successful completion of preclinical studies and clinical trials. Preclinical testing and clinical development are long, expensive and uncertain processes, and we do not know whether we, or any of our future collaborators, will be permitted to undertake clinical trials of any potential products. It may take us or any of our future collaborators several years to complete any such testing, and failure can occur at any stage of testing. Interim results of trial do not necessarily predict final results, and acceptable results in early trials may not be repeated in later trials. Data obtained from tests are susceptible to varying interpretation, which may delay, limit or prevent regulatory approval. Regulatory authorities may refuse or delay approval as a result of many other factors, including changes in regulatory policy during the period of product development. A number of companies in the pharmaceutical industry, including biotechnology companies, have suffered significant setbacks in advanced clinical trials, even after achieving promising results in earlier trials. Moreover, if and when our products reach clinical trials, we, or our future collaborators, may decide to discontinue development of any or all of these products at any time for commercial, scientific or other reasons. There is also a risk that competitors and third parties may develop similar or superior products or have proprietary rights that preclude us from ultimately marketing our products, as well as the potential risk that our products may not be accepted by the marketplace.

Completion of clinical trials may take many years. The length of time required varies substantially according to the type, complexity, novelty and intended use of the product candidate. Our rate of commencement and completion of clinical trials may be delayed by many factors, including:

- our inability to manufacture sufficient quantities of materials for use in clinical trials;
- variability in the number and types of patients available for each study;
- difficulty in maintaining contact with patients after treatment, resulting in incomplete data;
- unforeseen safety issues or side effects;
- poor or unanticipated effectiveness of products during the clinical trials; or
- government or regulatory delays.

An important element of our business strategy will be to enter into collaborative arrangements with third parties under which we license our therapeutic product candidates to those third parties for development and commercialization. We face significant competition in seeking appropriate collaborators. Also, these arrangements are complex to negotiate and time-consuming to document. We may not be successful in our attempts to establish these arrangements. The terms of any such arrangements that we establish may not be favorable to us. Further, any such arrangements may be unsuccessful.

We may encounter difficulties in integrating companies we acquire, and our operations and financial results could be harmed.

As part of our business strategy we acquire assets, technologies, compounds and businesses. Our past acquisitions, including our recent acquisition of Maxia Pharmaceuticals, Inc., have involved, and our future acquisitions may involve risks such as the following:

- we may be exposed to unknown liabilities of acquired companies;
- our acquisition and integration costs may be higher than we anticipated and may cause our quarterly and annual operating results to fluctuate;
- we may experience difficulty and expense in assimilating the operations and personnel of the acquired businesses, disrupting our business and diverting management's time and attention;
- we may be unable to integrate or complete the development and application of acquired technology, or compounds;
- we may experience difficulties in establishing and maintaining uniform standards, controls, procedures and policies;
- our relationships with key customers of acquired businesses may be impaired, due to changes in management and ownership of the acquired businesses;
- we may be unable to retain key employees of the acquired businesses;
- we may incur amortization or impairment expenses if an acquisition results in significant goodwill or other intangible assets; or
- our stockholders may be diluted if we pay for the acquisition with equity securities.

In addition, if we acquire additional businesses that are not located near existing sites, we may experience more difficulty integrating and managing the acquired businesses' operations.

If product liability lawsuits are successfully brought against us, we could face substantial liabilities and may be required to limit commercialization of our products.

The testing and marketing of medical products entails an inherent risk of product liability. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our products. Although we intend to obtain product liability insurance, this insurance may be prohibitively expensive, or may not fully cover our potential liabilities. Our inability to obtain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of pharmaceutical products we develop, alone or with our future collaborators. We, or our future collaborators, might not be able to obtain insurance at a reasonable cost, if at all.

If a natural disaster occurs, we may have to cease or limit our business operations.

We conduct our information products activities and a significant portion of our administrative functions at our facility in Palo Alto, California, which is in a seismically active area. Although we maintain business interruption insurance, we do not have and do not plan to obtain earthquake insurance. A major catastrophe, such as an earthquake or other natural disaster, could result in a prolonged interruption of our business.

RISKS RELATING TO CUSTOMERS AND COLLABORATORS

To generate significant revenues, we must obtain additional database customers and retain existing customers.

Our revenues are dependent on our ability to attract new customers and to retain existing customers. If we are unable to enter into additional agreements, or if our current database customers choose not to renew their agreements upon expiration or choose to renew their agreements at lower prices or for shorter durations, we may not generate additional revenues or maintain our current revenues. Our database revenues are also affected by the extent to which existing customers expand their agreements to include our new database products, the extent to which existing customers reduce the number of products for which they subscribe, and the number of product offerings that we offer, the impact of which will vary based upon our pricing of, or eliminations of, those products, as well as the pricing of new information product offerings. If the market for genomic information continues to soften, we may be required to lower prices further or restructure our product offerings to continue to meet customer demands which, in turn, may adversely impact our revenues. Some of our database agreements require us to meet performance obligations, some or all of which we may not be successful in attaining. A database customer can terminate its agreement before the end of its scheduled term if we breach the agreement and fail to cure the breach within a specified period. In addition, it is likely that database revenues will decrease if we are successful in entering into co-development arrangements with some of our current database subscribers to develop new therapeutic products.

Licensing our gene-related intellectual property may not contribute significantly to revenues for several years, and may never result in revenues.

Part of our strategy is to license to database customers and to some of our other customers our know-how and patent rights associated with the genetic information in our proprietary databases, for use in the discovery and development of potential pharmaceutical, diagnostic or other products. Any potential product that is the subject of such a license will require several years of further development, clinical testing and regulatory approval before commercialization. Therefore, milestone or royalty payments from these collaborations may not contribute to revenues for several years, if at all.

If conflicts arise between our future collaborators or advisors and us, they may act in their self-interest, which may be adverse to our interests or to the interests of our stockholders.

If conflicts arise between us and our future corporate collaborators or future scientific advisors, the other party may act in its self-interest and not in the interest of our stockholders. It is likely that many of our future collaborators will be conducting multiple product development efforts within each disease area that is the subject of the collaboration with us. Our future corporate collaborators may develop, either alone or with others, products in related fields that are competitive with the products or potential products that are the subject of these collaborations. Competing products, either developed by our future collaborators or to which our future collaborators have rights, may result in their withdrawal of support for our product candidates.

If we fail to enter into future in-licensing or collaborative arrangements or if these arrangements are unsuccessful, our business and operations would be negatively impacted.

We do not know if we will be able to establish collaborative arrangements, or whether any such future in-licensing or collaborative arrangements will ultimately be successful. For example, there have been, and may continue to be, a significant number of recent business combinations among large pharmaceutical companies that have resulted, and may continue to result, in a reduced number of potential future corporate collaborators. This consolidation may limit our ability to find partners who will work with us in developing and commercializing drugs. If business combinations involving our existing corporate collaborators were to occur, the effect could be to diminish, terminate or cause delays in one or more of our corporate collaborations or agreements. If we are unable to enter into collaborative arrangements or if those arrangements are unsuccessful, our research and development efforts could be negatively impacted and we may need to seek additional capital resources during times when those resources may not be available or are available on less favorable terms.

RISKS RELATING TO INTELLECTUAL PROPERTY

We are involved in patent litigation, which if not resolved favorably, could require us to pay damages.

We are currently involved in patent litigation.

In October 2001, Invitrogen Corporation filed an action against us in federal court, alleging infringement of three patents that relate to the use of reverse transcriptase with no RNase H activity in preparing complimentary DNA from RNA. The complaint seeks unspecified money damages and injunctive relief. In November 2001, we filed our answers to Invitrogen's patent infringement claims, and asserted seven counterclaims against Invitrogen, seeking declaratory relief with respect to the patents at issue, implied license, estoppel, laches, and patent misuse. We are also seeking our fees, costs and expenses. Invitrogen filed its answer to our counterclaims in January 2002. In February 2003, we added a counterclaim for unfair business practices. In June 2003, the Court stayed all proceedings pending final disposition of the appeal in a related case or entry of any order in any other action invalidating the same patents that are asserted in this case. In November 2001, we filed a complaint against Invitrogen in federal court alleging infringement of 13 of our patents relating to genes, RNA amplification and gene expression, and methods of fabricating microarrays of biological samples. The complaint seeks a permanent injunction enjoining Invitrogen from further infringement of the patents at issue, damages for Invitrogen's conduct, as well as our fees, costs, and interest. We are further

seeking triple damages from the infringement claim based on Invitrogen's willful infringement of our patents. In April 2002, Invitrogen filed answers to our patent infringement claims and brought counterclaims against us seeking declaratory judgments that the patents in suit are invalid and not infringed. Invitrogen also pled, but later withdrew, its affirmative defense and counterclaim alleging one of our patents is unenforceable. In April 2002, we filed our answer denying Invitrogen's counterclaims. Invitrogen has represented to the Court that its past sales of the eight of our gene patents were not substantial and that it no longer sells these products. On July 2, 2003, the Court entered a stipulated two-month stay of all proceedings in this action.

We believe we have meritorious defenses and intend to defend the suit brought by Invitrogen vigorously. However, our defenses may be unsuccessful. At this time, we cannot reasonably estimate the possible range of any loss or damages resulting from these suits and counterclaims due to uncertainty regarding the ultimate outcome. In addition, regardless of the outcome, we expect that the Invitrogen litigation will result in future costs to us, which could be substantial. Further, there can be no assurance that any license that may be required as a result of this litigation will be available on commercially acceptable terms, if at all.

If we are subject to additional litigation and infringement claims, they could be costly and disrupt our business.

The technology that we use to develop our products, and the technology that we incorporate in our products, may be subject to claims that they infringe the patents or proprietary rights of others. The risk of this occurring will tend to increase as the genomics, biotechnology and software industries expand, more patents are issued and other companies attempt to discover genes and SNPs and engage in other genomic-related businesses. The success of our therapeutic discovery and development efforts will also depend, in part, on our ability to operate without infringing or misappropriating the proprietary rights of others.

As is typical in the genomics, biotechnology and software industries, we have received, and we will probably receive in the future, notices from third parties alleging patent infringement. Except for Invitrogen, no third party has a current filed patent lawsuit against us.

We may, however, be involved in future lawsuits alleging patent infringement or other intellectual property rights violations. In addition, litigation may be necessary to:

- assert claims of infringement;
- enforce our patents;
- protect our trade secrets or know-how; or
- determine the enforceability, scope and validity of the proprietary rights of others.

We may be unsuccessful in defending or pursuing these lawsuits. Regardless of the outcome, litigation can be very costly and can divert management's efforts. An adverse determination may subject us to significant liabilities or require us or our future collaborators to seek licenses to other parties' patents or proprietary rights. We or our future collaborators may also be restricted or prevented from manufacturing or selling our products and services. Further, we or our future collaborators may not be able to obtain any necessary licenses on acceptable terms, if at all.

We may be unable to protect our proprietary information, which may result in its unauthorized use and a loss of revenue.

Our business and competitive position depend upon our ability to protect our proprietary database information and software technology. Despite our efforts to protect this information and technology, unauthorized parties may attempt to obtain and use information that we regard as proprietary. Although our database subscription agreements require our subscribers to control access to our databases, policing unauthorized use of our databases and software may be difficult, both domestically and internationally.

We pursue a policy of having our employees, consultants and advisors execute proprietary information and invention agreements when they begin working for us. However, these agreements may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure.

Our means of protecting our proprietary rights may not be adequate, and our competitors may:

- independently develop substantially equivalent proprietary information and techniques;
- otherwise gain access to our proprietary information; or
- design around patents issued to us or our other intellectual property.

If the inventions described in our patent applications on full-length or partial genes, proteins and antibodies are found to be unpatentable, our issued patents are not enforced or our patent applications conflict with patent applications filed by others, our revenues may decline.

One of our strategies is to file patent applications on what we believe to be novel full-length and partial genes, proteins, antibodies and SNPs obtained through our efforts to discover the order, or sequence, of the molecules, or bases, of genes. We have filed U.S. patent applications in which we claimed partial genes. We have also applied for patents in the U.S. and other countries claiming full-length genes associated with cells and tissues involved in our gene sequencing program. We hold a number of issued U.S. patents on full-length genes, the proteins they encode and antibodies directed against them and one issued U.S. patent claiming multiple partial genes. While the United States Patent and Trademark Office has issued patents covering full-length genes, partial genes and SNPs, the Patent and Trademark Office may choose to interpret new guidelines for the issuance of patents in a more restrictive manner in the future, which could affect the issuance of our pending patent applications. We also do not know whether or how courts may enforce our issued patents, if that becomes necessary. If a court finds these types of inventions to be unpatentable, or interprets them narrowly, the value of our patent portfolio and possibly our revenues could be diminished.

We believe that some of our patent applications claim genes and partial genes that may also be claimed in patent applications filed by others. In some or all of these applications, a determination of priority of inventorship may need to be decided in an interference before the United States Patent and Trademark Office, before a patent is issued. If a full-length or partial length genes for which we seek a patent is issued to one of our competitors, we may be unable to include that full-length or partial length gene in a library of bioreagents. This could result in a loss of revenues.

If the effective term of our patents is decreased due to changes in the United States patent laws or if we need to refile some of our patent applications, the value of our patent portfolio and the revenues we derive from it may be decreased.

The value of our patents depends in part on their duration. A shorter period of patent protection could lessen the value of our rights under any patents that we obtain and may decrease the revenues we derive from our patents. The U.S. patent laws were amended in 1995 to change the term of patent protection from 17 years from patent issuance to 20 years from the earliest effective filing date of the application. Because the average time from filing to issuance of biotechnology applications is at least one year and may be more than three years depending on the subject matter, a 20-year patent term from the filing date may result in substantially shorter patent protection. Also, we may need to refile some of our applications claiming large numbers of genes and, in these situations, the patent term will be measured from the date of the earliest priority application. This would shorten our period of patent exclusivity and may decrease the revenues that we might obtain from the patents.

If patent application filing fees are significantly increased, our expenses related to intellectual property or our intellectual property strategy may be adversely affected.

Our ability to license proprietary genes may be dependent on our ability to obtain patents. We believe we have the largest commercial portfolio of issued U.S. patents covering human full-length genes, the proteins they encode and the antibodies directed against them. If legislation currently proposed by the United States Patent and Trademark Office is adopted, fees associated with filing and prosecuting patent applications would increase significantly. If such fees are significantly increased, we would incur higher expenses and our intellectual property strategy could be adversely affected.

International patent protection is particularly uncertain, and if we are involved in opposition proceedings in foreign countries, we may have to expend substantial sums and management resources.

Biotechnology patent law outside the U.S. is even more uncertain than in the U.S. and is currently undergoing review and revision in many countries. Further, the laws of some foreign countries may not protect our intellectual property rights to the same extent as United States laws. We may participate in opposition proceedings to determine the validity of our foreign patents or our competitors' foreign patents, which could result in substantial costs and diversion of our efforts.

REGULATORY RISKS

If we are unable to obtain regulatory approval to develop and market products in the United States and foreign jurisdictions, we or our future collaborators might not be permitted to commercialize products from our research.

Before commencing clinical trials in humans, we, or our future collaborators, will need to submit and receive approval from the FDA of an Investigational New Drug application, or IND. The regulatory process also requires preclinical testing. Data obtained from preclinical and clinical activities are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. In addition, delays or rejections may be encountered based upon changes in regulatory policy for product approval during the period of product development and regulatory agency review. Any failure to obtain regulatory approval could delay or prevent us from commercializing products.

Due, in part, to the early stage of our drug candidate research and development process, we cannot predict whether regulatory approval will be obtained for any product we, or our future collaborators, hope to develop. Significant research and development efforts will be necessary before any products can be commercialized. Satisfaction of regulatory requirements typically takes many years, is dependent upon the type, complexity and novelty of the product and requires the expenditure of substantial resources.

If regulatory approval of a product is granted, this approval will be limited to those disease states and conditions for which the product is demonstrated through clinical trials to be safe and efficacious. We cannot ensure that any compound developed by us, alone or with others, will prove to be safe and efficacious in clinical trials and will meet all of the applicable regulatory requirements needed to receive marketing approval.

Outside the United States, our ability, or that of our future collaborative partners, to market a product is contingent upon receiving a marketing authorization from the appropriate regulatory authorities. This foreign regulatory approval process typically includes all of the risks associated with FDA approval described above and may also include additional risks.

Because our activities involve the use of hazardous materials, we may be subject to claims relating to improper handling, storage or disposal of these materials that could be time consuming and costly.

Our research and development processes involve the controlled use of hazardous and radioactive materials and biological waste. Our operations produce hazardous waste products. We cannot eliminate the risk of accidental contamination or discharge and any resultant injury from these materials. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of these materials and waste products. We may be sued for any injury or contamination that results from our use or the use by third parties of these materials, and our liability may exceed our insurance coverage and our total assets. Compliance with environmental laws and regulations may be expensive, and current or future environmental regulations may impair our research, development and production efforts.

Future changes to environmental, health and safety laws could cause us to incur additional expense or restrict our operations. In addition, our future collaborators may use hazardous materials in connection with our collaborative efforts. To our knowledge, their work is performed in accordance with applicable biosafety regulations. In the event of a lawsuit or investigation, however, we could be held responsible for any injury caused to persons or property by exposure to, or release of, these hazardous materials used by these parties. Further, we may be required to indemnify our collaborators against all damages and other liabilities arising out of our development activities or products produced in connection with these collaborations.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to interest rate risk primarily through our investments in short-term marketable securities. Our investment policy calls for investment in short term, low risk instruments. As of June 30, 2003, investments in marketable securities were $338.6 million. Due to the nature of these investments, if market interest rates were to increase immediately and uniformly by 10% from levels as of June 30, 2003, the decline in the fair value of the portfolio would not be material.

We are exposed to equity price risks on the marketable portion of equity securities included in our portfolio of investments and long-term investments, entered into to further our business and strategic objectives. These investments are in small capitalization stocks in the pharmaceutical/ biotechnology industry sector, and are primarily in companies with which we have research and development, licensing or other collaborative agreements. We typically do not attempt to reduce or eliminate our market exposure on these securities. As of June 30, 2003, long-term investments were $31.4 million.

We are exposed to foreign exchange rate fluctuations as the financial results of our foreign operations are translated into U.S. dollars in consolidation. As exchange rates vary, these results, when translated, may vary from expectations and adversely impact our financial position or results of operations. All of our revenues are denominated in U.S. dollars. We do not enter into forward exchange contracts as a hedge against foreign currency exchange risk on transactions denominated in foreign currencies or for speculative or trading purposes. If currency exchange rates were to fluctuate immediately and uniformly by 10% from levels as of June 30, 2003, the impact to our financial position or results of operations would not be material.

Item 4. Controls and Procedures

(a) ***Evaluation of disclosure controls and procedures.*** We maintain "disclosure controls and procedures," as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act"), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q, our Chief Executive Officer and Chief Financial Officer have concluded that, subject to the limitations noted above, our disclosure controls and procedures were effective to ensure that material information relating to us, including our consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which this Quarterly Report on Form 10-Q was being prepared.

(b) ***Changes in internal control over financial reporting***. There was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) identified in connection with the evaluation described in Item 4(a) above that occurred during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II: OTHER INFORMATION

Item 1: Legal Proceedings

Invitrogen

On October 17, 2001, Invitrogen Corporation filed a complaint for patent infringement against Incyte in the United States District Court for the District of Delaware. On November 21, 2001, we filed our answer to Invitrogen's complaint. In addition, we asserted seven counterclaims against Invitrogen seeking declaratory relief with respect to the patents at issue, implied license, estoppel, laches, and patent misuse. We are also seeking our fees, costs, and expenses. Invitrogen filed its answer to our counterclaims on January 9, 2002. On February 25, 2003, we added a counterclaim for unfair business practices under California Business & Professions Code Section 17200. On June 24, 2003, the Court stayed all proceedings pending final disposition of the appeal in the related case Clontech Laboratories, Inc. v. Invitrogen Corporation, C.A. No. 98-750-SLR (D. Del.), or entry of any order in any other action invalidating the same patents that are asserted in this case.

On November 21, 2001, we filed a complaint against Invitrogen, amended on December 21, 2001 and March 7, 2002, in the United States District Court for the Southern District of California alleging infringement of thirteen of its patents. Eight of the asserted patents (U.S. patent numbers 5,633,149, 5,637,462, 5,817,497, 5,840,535, 5,919,686, 5,925,542, 5,962,263, and 5,789,198) are gene patents. Three of the patents (U.S. patent numbers 5,716,785, 5,891,636, and 6,291,170) relate to RNA amplification and gene expression. Two of the patents (U.S. patent numbers 5,807,522 and 6,110,426) relate to methods of fabricating microarrays of biological samples. The complaint seeks a permanent injunction enjoining Invitrogen from further infringement of the patents at issue, damages for Invitrogen's conduct, as well as our fees, costs, and interest. We further seek triple damages based on Invitrogen's willful infringement of our patents. On April 2, 2002, Invitrogen filed its answer to our complaint and brought counterclaims against us seeking declaratory judgments that the patents in suit are invalid and not infringed. Invitrogen also pled, but later withdrew, its affirmative defense and counterclaim alleging that U.S. patent number 6,110,426 is unenforceable. On April 25, 2002, we filed our answer denying Invitrogen's counterclaims. Invitrogen has represented to the Court that its past sales of the eight GeneStorm cDNA clones charged with infringement of U.S. Patent Nos. 5,633,149, 5,637,462, 5,789,198, 5,817,497, 5,840,535, 5,919,686, 5,925,542 and 5,962,263 were not substantial and that it no longer sells these products. On July 2, 2003, the Court entered a stipulated two-month stay of all proceedings in this action.

Item 4: Submission of Matters to a Vote of Security Holders

On June 26, 2003, we held our Annual Meeting of Stockholders.

The following actions were taken at the annual meeting:

1. The following Directors were elected:

	For	Withheld
Roy A. Whitfield	51,921,739	1,213,971
Paul A. Friedman	51,929,343	1,206,367
Robert B. Stein	51,957,594	1,178,116
Barry M. Ariko	51,000,309	2,135,401
Julian C. Baker	51,004,056	2,131,654
Paul A. Brooke	51,004,880	2,130,830
Frederick B. Craves	51,573,880	1,561,830
Richard U. DeSchutter	39,049,311	14,086,399
Jon S. Saxe	51,001,738	2,133,972

Institutional Shareholder Services initially recommended that Incyte stockholders withhold votes to elect Mr. DeSchutter as a director of Incyte based upon Mr. DeSchutter's attendance at fewer than 75% of the aggregate number of meetings held by the Board of Directors and of the committees on which he served during 2002, as reported in Incyte's proxy statement filed on April 25, 2003. On June 17, 2003, ISS reversed its position, recommending that Incyte stockholders vote for Mr. DeSchutter's election to the Incyte Board of Directors, based upon clarification from Incyte that Mr. DeSchutter attended ten of fourteen, or 71%, of the board and committee meetings that he was scheduled to attend in 2002 and that, in most cases, Mr. DeSchutter was unable to attend such meetings due to conflicting prior commitments that existed at the time that Mr. DeSchutter joined the Incyte Board of Directors and audit committee in January 2002 and June 2002, respectively.

2. An amendment to our 1997 Employee Stock Purchase Plan was approved.

For	Against	Abstain
50,791,459	1,385,877	958,374

3. The ratification of the appointment of Ernst & Young LLP as our independent auditors was approved.

For	Against	Abstain
51,598,095	1,039,607	498,008

Item 6: Exhibits and Reports on Form 8-K

a) Exhibits

Exhibit Number	Description of Document
3(ii)	Bylaws of Incyte Corporation, as amended June 23, 2003
10.4#	1993 Directors' Stock Option Plan of Incyte Corporation, as amended and restated
10.15#	1997 Employee Stock Purchase Plan of Incyte Corporation, as amended April 15, 2003
10.45	Sublease Agreement, dated June 16, 2003, between E. I. Dupont de Nemours and Company and Incyte Corporation
31.1	Rule 13a – 14(a) Certification of Chief Executive Officer
31.2	Rule 13a – 14(a) Certification of the Chief Financial Officer
32.1*	Statement of the Chief Executive Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C Section 1350)
32.2*	Statement of the Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C Section 1350)

* In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Form 10-Q and will not be deemed "filed" for purpose of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

\# Indicates management contract or compensatory plan or arrangement.

b) Reports on Form 8-K

On May 5, 2003, we filed a Current Report on Form 8-K furnishing under Item 12 our press release relating to our financial results for the quarter ended March 31, 2003.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

INCYTE CORPORATION

Dated: August 13, 2003

By: /s/ PAUL A. FRIEDMAN

PAUL A. FRIEDMAN
Chief Executive Officer
(Principal Executive Officer)

Dated: August 13, 2003

By: /s/ JOHN M. VUKO

JOHN M. VUKO
Chief Financial Officer
(Principal Financial Officer)

INCYTE CORPORATION

EXHIBIT INDEX

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10.45	Sublease Agreement, dated June 16, 2003, between E. I. Dupont de Nemours and Company and Incyte Corporation
31.1	Rule 13a – 14(a) Certification of Chief Executive Officer
31.2	Rule 13a – 14(a) Certification of the Chief Financial Officer
32.1*	Statement of the Chief Executive Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C Section 1350)
32.2*	Statement of the Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C Section 1350)

* In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Form 10-Q and will not be deemed "filed" for purpose of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

\# Indicates management contract or compensatory plan or arrangement.

BYLAWS
OF
INCYTE CORPORATION

(amended as of June 23, 2003)

ARTICLE I

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. All meetings of the stockholders shall be held at such place within or without the State of Delaware as may be fixed from time to time by the board of directors or the chief executive officer, or if not so designated, at the registered office of the corporation.

Section 2. Annual Meeting. Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the board of directors or the chief executive officer and stated in the notice of meeting. At the annual meeting the stockholders shall elect by a plurality vote a board of directors and shall transact such other business as may properly be brought before the meeting.

To be properly brought before the annual meeting, business must be either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board of directors or the chief executive officer, (b) otherwise properly brought before the meeting by or at the direction of the board of directors or the chief executive officer, or (c) otherwise properly brought before the meeting by a stockholder of record. In addition to any other applicable requirements, for business to be properly brought before the annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a stockholder's notice must be delivered by a nationally recognized courier service or mailed by first class United States mail, postage or delivery charges prepaid, and received at the principal executive offices of the corporation, addressed to the attention of the secretary of the corporation, not less than 60 days nor more than 90 days prior to the scheduled date of the meeting (regardless of any postponements, deferrals or adjournments of that meeting to a later date); provided, however, that in the event that less than 70 days' notice or prior public disclosure of the date of the scheduled meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the earlier of (a) the close of business on the 10th day following the day on which such notice of the date of the scheduled annual meeting was mailed or such public disclosure was made, whichever first occurs, and (b) two days prior to the date of the scheduled meeting. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class, series and number of shares of the corporation that are owned beneficially by the stockholder, and (iv) any material interest of the stockholder in such business. Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set

forth in this Section; provided, however, that nothing in this Section shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting.

The chairman of the board of the corporation (or such other person presiding at the meeting in accordance with these bylaws) shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Section 3. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may, unless otherwise prescribed by statute or by the certificate of incorporation, be called only by the board of directors or the chief executive officer and shall be called by the chief executive officer or secretary at the request in writing of a majority of the board of directors. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

Section 4. Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of stockholders, annual or special, stating the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten nor more than sixty days before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 5. Voting List. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city or town where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 6. Quorum. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided by statute, the certificate of incorporation or these bylaws.

Section 7. Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these bylaws, which time and place shall be announced at the meeting, by a majority of the stockholders present in person or represented by proxy at the meeting and entitled to vote, though less than a quorum, or, if no stockholder is present or represented by proxy, by any officer entitled to preside at or to act as secretary of such meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted

which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. Action at Meetings. When a quorum is present at any meeting, the vote of the holders of a majority of the stock present in person or represented by proxy and entitled to vote on the question shall decide any question brought before such meeting, unless the question is one upon which by express provision of law, the certificate of incorporation or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 9. Voting and Proxies. Unless otherwise provided in the certificate of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote for each share of capital stock having voting power held of record by such stockholder. Each stockholder entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

Section 10. Action Without Meeting. Any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE II

DIRECTORS

Section 1. Number, Election, Tenure and Qualification. The number of directors which shall constitute the whole board of directors shall not be less than one (1) nor more than twelve (12), and the exact number of directors shall be ten (10) until changed by resolution of the board of directors. Within such limit, the number of directors which shall constitute the whole board of directors shall be fixed from time to time by resolution of the board of directors. The directors shall be elected at the annual meeting or at any special meeting of the stockholders, except as provided in Section 3 of this Article, and each director elected shall hold office until his successor is elected and qualified, unless sooner displaced. Directors need not be stockholders.

Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. Nominations of persons for election to the board of directors at the annual meeting, by or at the direction of the board of directors, may be made by any

nominating committee or person appointed by the board of directors; nominations may also be made by any stockholder of record of the corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section. Such nominations, other than those made by or at the direction of the board of directors, shall be made pursuant to timely notice in writing to the secretary of the corporation. To be timely, a stockholder's notice shall be delivered by a nationally recognized courier service or mailed by first class United States mail, postage or delivery charges prepaid, and received at the principal executive offices of the corporation addressed to the attention of the secretary of the corporation not less than 60 days nor more than 90 days prior to the scheduled date of the meeting (regardless of any postponements, deferrals or adjournments of that meeting to a later date); provided, however, that, in the case of an annual meeting and in the event that less than 70 days' notice or prior public disclosure of the date of the scheduled meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the earlier of (a) the close of business on the 10th day following the day on which such notice of the date of the scheduled meeting was mailed or such public disclosure was made, whichever first occurs, or (b) two days prior to the date of the scheduled meeting. Such stockholder's notice to the secretary shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class, series and number of shares of capital stock of the corporation that are owned beneficially by the person, (iv) a statement as to the person's citizenship, and (v) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice, (i) the name and record address of the stockholder and (ii) the class, series and number of shares of capital stock of the corporation that are owned beneficially by the stockholder. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as director of the corporation. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth herein.

In connection with any annual meeting, the chairman of the board of directors (or such other person presiding at such meeting in accordance with these by-laws) shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

Section 2. Enlargement. The number of the board of directors may be increased at any time by vote of a majority of the directors then in office.

Section 3. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. In the event of a vacancy in the board

of directors, the remaining directors, except as otherwise provided by law or these bylaws, may exercise the powers of the full board until the vacancy is filled.

Section 4. Resignation and Removal. Any director may resign at any time upon written notice to the corporation at its principal place of business or to the chief executive officer or the secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, unless otherwise specified by law or the certificate of incorporation.

Section 5. General Powers. The business and affairs of the corporation shall be managed by its board of directors, which may exercise all powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

Section 6. Chairman of the Board. If the board of directors appoints a chairman of the board, he shall, when present, preside at all meetings of the stockholders and the board of directors. He shall perform such duties and possess such powers as are customarily vested in the office of the chairman of the board or as may be vested in him by the board of directors.

Section 7. Place of Meetings. The board of directors may hold meetings, both regular and special, either within or without the State of Delaware.

Section 8. Regular Meetings. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board; provided that any director who is absent when such a determination is made shall be given prompt notice of such determination. A regular meeting of the board of directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

Section 9. Special Meetings. Special meetings of the board may be called by the chief executive officer, secretary, or on the written request of two or more directors, or by one director in the event that there is only one director in office. Two days notice to each director, either personally or by telegram, cable, telecopy, commercial delivery service, telex or similar means sent to his business or home address, or three days notice by written notice deposited in the mail, shall be given to each director by the secretary or by the officer or one of the directors calling the meeting. A notice or waiver of notice of a meeting of the board of directors need not specify the purposes of the meeting.

Section 10. Quorum, Action at Meeting, Adjournments. At all meetings of the board, a majority of directors then in office, but in no event less than one third of the entire board, shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by law or by the certificate of incorporation. For purposes of this section, the term “entire board” shall mean the number of directors last fixed by the stockholders or directors, as the case may be, in accordance with law and these bylaws; provided, however, that if less than all the number so fixed of directors were elected, the “entire

board" shall mean the greatest number of directors so elected to hold office at any one time pursuant to such authorization. If a quorum shall not be present at any meeting of the board of directors, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 11. Action by Consent. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors or of any committee thereof may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board, or committee.

Section 12. Telephonic Meetings. Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors or of any committee thereof may participate in a meeting of the board of directors or of any committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 13. Committees. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board of directors, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the bylaws of the corporation; and, unless the resolution designating such committee or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors. Each committee shall keep regular minutes of its meetings and make such reports to the board of directors as the board of directors may request. Except as the board of directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these bylaws for the conduct of its business by the board of directors.

Section 14. Compensation. Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix from time to time the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and the performance of their responsibilities as directors and may be paid a fixed sum for attendance at each meeting of the board of directors

and/or a stated salary as director. No such payment shall preclude any director from serving the corporation or its parent or subsidiary corporations in any other capacity and receiving compensation therefor. The board of directors may also allow compensation for members of special or standing committees for service on such committees.

ARTICLE III
OFFICERS

Section 1. Enumeration. The officers of the corporation shall be chosen by the board of directors and shall be a president, a secretary and a treasurer and such other officers with such titles, terms of office and duties as the board of directors may from time to time determine, including a chairman of the board, one or more vice-presidents, and one or more assistant secretaries and assistant treasurers. If authorized by resolution of the board of directors, the chief executive officer may be empowered to appoint from time to time assistant secretaries and assistant treasurers. Any number of offices may be held by the same person, unless the certificate of incorporation or these bylaws otherwise provide.

Section 2. Election. The board of directors at its first meeting after each annual meeting of stockholders shall choose a president, a secretary and a treasurer. Other officers may be appointed by the board of directors at such meeting, at any other meeting, or by written consent.

Section 3. Tenure. The officers of the corporation shall hold office until their successors are chosen and qualify, unless a different term is specified in the vote choosing or appointing him, or until his earlier death, resignation or removal. Any officer elected or appointed by the board of directors or by the chief executive officer may be removed at any time by the affirmative vote of a majority of the board of directors or a committee duly authorized to do so, except that any officer appointed by the chief executive officer may also be removed at any time by the chief executive officer. Any vacancy occurring in any office of the corporation may be filled by the board of directors, at its discretion. Any officer may resign by delivering his written resignation to the corporation at its principal place of business or to the chief executive officer or the secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Section 4. President. The president shall be the chief operating officer of the corporation. He shall also be the chief executive officer unless the board of directors otherwise provides. The president shall, unless the board of directors provides otherwise in a specific instance or generally, preside at all meetings of the stockholders and the board of directors, have general and active management of the business of the corporation and see that all orders and resolutions of the board of directors are carried into effect. The president shall execute bonds, mortgages, and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation.

Section 5. Vice-Presidents. In the absence of the president or in the event of his inability or refusal to act, the vice-president, or if there be more than one vice-president, the vice-presidents in the order designated by the board of directors or the chief executive officer (or in the absence of any designation, then in the order determined by their tenure in office) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-presidents shall perform such other duties and have such other powers as the board of directors or the chief executive officer may from time to time prescribe.

Section 6. Secretary. The secretary shall have such powers and perform such duties as are incident to the office of secretary. He shall maintain a stock ledger and prepare lists of stockholders and their addresses as required and shall be the custodian of corporate records. The secretary shall attend all meetings of the board of directors and all meetings of the stockholders and record all the proceedings of the meetings of the corporation and of the board of directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the board of directors, and shall perform such other duties as may be from time to time prescribed by the board of directors or chief executive officer, under whose supervision he shall be. He shall have custody of the corporate seal of the corporation and he, or an assistant secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

Section 7. Assistant Secretaries. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors, the chief executive officer or the secretary (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors, the chief executive officer or the secretary may from time to time prescribe. In the absence of the secretary or any assistant secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary or acting secretary to keep a record of the meeting.

Section 8. Treasurer. The treasurer shall perform such duties and shall have such powers as may be assigned to him by the board of directors or the chief executive officer. In addition, the treasurer shall perform such duties and have such powers as are incident to the office of treasurer. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall render to the chief executive officer and the board of directors, when the chief executive officer or board of directors so requires, an account of all his transactions as treasurer and of the financial condition of the corporation.

Section 9. Assistant Treasurers. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors, the chief executive officer or the treasurer (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the board of directors, the chief executive officer or the treasurer may from time to time prescribe.

Section 10. Bond. If required by the board of directors, any officer shall give the corporation a bond in such sum and with such surety or sureties and upon such terms and conditions as shall be satisfactory to the board of directors, including without limitation a bond for the faithful performance of the duties of his office and for the restoration to the corporation of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control and belonging to the corporation.

ARTICLE IV

NOTICES

Section 1. Delivery. Whenever, under the provisions of law, or of the certificate of incorporation or these bylaws, written notice is required to be given to any director or stockholder, such notice may be given by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Unless written notice by mail is required by law, written notice may also be given by telegram, cable, telecopy, commercial delivery service, telex or similar means, addressed to such director or stockholder at his address as it appears on the records of the corporation, in which case such notice shall be deemed to be given when delivered into the control of the persons charged with effecting such transmission, the transmission charge to be paid by the corporation or the person sending such notice and not by the addressee. Oral notice or other in-hand delivery (in person or by telephone) shall be deemed given at the time it is actually given.

Section 2. Waiver of Notice. Whenever any notice is required to be given under the provisions of law or of the certificate of incorporation or of these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE V

INDEMNIFICATION

Section 1. Actions Other than by or in the Right of the Corporation. Subject to Section 4 of this Article V, the corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of

the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Actions by or in the Right of the Corporation. Subject to Section 4 of this Article V, the corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 3. Success on the Merits. To the extent that any person described in Section 1 or 2 of this Article V has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said Sections, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 4. Specific Authorization. Any indemnification under Section 1 or 2 of this Article V (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2, as the case may be, of this Article V. Such determination shall be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders of the corporation.

Section 5. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the manner provided for in Section 4 of this Article V upon receipt of an undertaking by or on behalf of any person described in said Section to repay such amount unless it shall ultimately be determined that he is entitled to indemnification by the corporation as authorized in this Article V.

Section 6. Non-Exclusivity. The indemnification and advancement of expenses provided by this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be director, officer, employee or agent of the corporation and shall inure to the benefit of the heirs, executors and administrators of such a person; provided, however, that any repeal or amendment of any of the provisions of this Article V shall not adversely affect any right or protection of any indemnitee existing at the time of such repeal or amendment.

Section 7. Insurance. The board of directors may authorize, by a vote of the majority of the full board, the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article V.

Section 8. Severability. If any word, clause or provision of this Article V or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect.

Section 9. Intent of Article. The intent of this Article V is to provide for indemnification to the fullest extent not prohibited by section 145 of the General Corporation Law of Delaware. To the extent that such Section or any successor section may be amended or supplemented from time to time, this Article V shall be amended automatically and construed so as to permit indemnification to the fullest extent from time to time not prohibited by law.

ARTICLE VI
CAPITAL STOCK

Section 1. Certificates of Stock. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the chairman or vice-chairman of the board of directors, or the president or a vice-president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose

facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

Section 2. Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to give reasonable evidence of such loss, theft or destruction, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate.

Section 3. Transfer of Stock. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and proper evidence of compliance with other conditions to rightful transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 4. Record Date. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty days nor less then ten days before the date of such meeting, nor more than sixty days prior to any other action to which such record date relates. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the board of directors is necessary, shall be the day on which the first written consent is expressed. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating to such purpose.

Section 5. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its

books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII

CERTAIN TRANSACTIONS

Section 1. Transactions with Interested Parties. No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction or solely because his or their votes are counted for such purpose, if:

(a) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(b) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee thereof, or the stockholders.

Section 2. Quorum. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the corporation, if any, may be declared by the board of directors at any regular or special meeting or by written consent, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

Section 2. Reserves. The directors may set apart out of any funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 3. Checks. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

Section 4. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors.

Section 5. Seal. The board of directors may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the word "Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced. The seal may be altered from time to time by the board of directors.

ARTICLE IX

AMENDMENTS

These bylaws may be altered, amended or repealed or new bylaws may be adopted by the stockholders or by the board of directors, when such power is conferred upon the board of directors by the certificate of incorporation, at any regular meeting of the stockholders or of the board of directors or at any special meeting of the stockholders or of the board of directors provided, however, that in the case of a regular or special meeting of stockholders, notice of such alteration, amendment, repeal or adoption of new bylaws be contained in the notice of such meeting.

AMENDED AND RESTATED
1993 DIRECTORS' STOCK OPTION PLAN OF
INCYTE CORPORATION
(As Amended June 23, 2003)

SECTION 1. INTRODUCTION.

The Plan was adopted on July 28, 1993, amended and restated as of August 3, 1993, amended as of March 22, 1995, amended and restated as of March 18, 1998, amended and restated as of March 30, 2001, amended as of May 1, 2001, amended as of December 20, 2001, amended as of February 27, 2002, amended as of February 25, 2003, amended as of March 15, 2003 and amended as of June 23, 2003. The purpose of the Plan is to offer the Company's Nonemployee Directors an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by purchasing Shares of the Company's Stock. The Plan seeks to achieve this purpose by providing for the grant of nonstatutory options to purchase Stock.

The Plan is intended to comply in all respects with Rule 16b-3 (or its successor) under the Exchange Act and shall be construed accordingly.

SECTION 2. DEFINITIONS.

(a) "*Board of Directors*" shall mean the Board of Directors of the Company, as constituted from time to time.

(b) "*Change in Control*" shall mean the occurrence of either of the following events:

(i) A change in the composition of the Board of Directors, as a result of which fewer than one-half of the incumbent directors are directors who either:

(A) Had been directors of the Company 24 months prior to such change; or

(B) Were elected, or nominated for election, to the Board of Directors with the affirmative votes of at least a majority of the directors who had been directors of the Company 24 months prior to such change and who were still in office at the time of the election or nomination; or

(ii) Any "person" (as such term is used in sections 13(d) and 14(d) of the Exchange Act) by the acquisition or aggregation of securities is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities ordinarily (and apart from rights accruing under special circumstances) having the right to vote at elections of directors (the "Base Capital Stock"); except that any change in the relative beneficial ownership of the Company's securities by any person resulting solely from a reduction in the aggregate number of outstanding shares of Base Capital

Stock, and any decrease thereafter in such person's ownership of securities, shall be disregarded until such person increases in any manner, directly or indirectly, such person's beneficial ownership of any securities of the Company.

(c) "*Code*" shall mean the Internal Revenue Code of 1986, as amended.

(d) "*Company*" shall mean Incyte Corporation (formerly Incyte Genomics, Inc.), a Delaware corporation.

(e) "*Employee*" shall mean an employee (within the meaning of section 3401(c) of the Code and the regulations thereunder) of the Company or of a Subsidiary of the Company.

(f) "*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended.

(g) "*Exercise Price*" shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified in the applicable Stock Option Agreement.

(h) "*Fair Market Value*" shall mean the market price of Stock, determined by the Board of Directors as follows:

(i) If Stock was traded over-the-counter on the date in question but was not traded on The Nasdaq Stock Market, then the Fair Market Value shall be equal to the mean between the last reported representative bid and asked prices quoted for such date by the principal automated inter-dealer quotation system on which Stock is quoted or, if the Stock is not quoted on any such system, by the "Pink Sheets" published by the National Quotation Bureau, Inc.;

(ii) If Stock was traded over-the-counter on the date in question and was traded on The Nasdaq Stock Market, then the Fair Market Value shall be equal to the last-transaction price quoted for such date by The Nasdaq Stock Market;

(iii) If Stock was traded on a stock exchange on the date in question, then the Fair Market Value shall be equal to the closing price reported for such date by the applicable composite-transactions report; and

(iv) If none of the foregoing provisions is applicable, then the Fair Market Value shall be determined by the Board of Directors in good faith on such basis as it deems appropriate.

In all cases, the determination of Fair Market Value by the Board of Directors shall be conclusive and binding on all persons.

(i) "*Nonemployee Director*" shall mean a member of the Board of Directors who (i) is not an Employee, (ii) does not own five percent or more of the Stock, (iii) does not represent an owner of five percent or more of the Stock and (iv) does not join the Board of Directors pursuant to, or as a result of, a contractual arrangement between the Company and a third party.

(j) "*Nonstatutory Option*" shall mean a stock option not described in sections 422(b) or 423(b) of the Code.

(k) "*Option*" shall mean a Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.

(l) "*Optionee*" shall mean an individual who holds an Option.

(m) "*Plan*" shall mean this 1993 Directors' Stock Option Plan of Incyte Corporation (formerly Incyte Genomics, Inc.), as it may be amended from time to time.

(n) "*Reverse Split*" shall mean the one-for-two reverse split of the Stock authorized by the Board of Directors prior to the initial adoption of the Plan.

(o) "*Service*" shall mean service as a member of the Board of Directors, whether or not as a Nonemployee Director.

(p) "*Share*" shall mean one share of Stock, as adjusted in accordance with Section 6 (if applicable). All references to numbers of Shares in Section 3 hereof give effect to the Reverse Split and the 100% stock dividends paid in November 1997 and August 2000.

(q) "*Stock*" shall mean the Common Stock ($.001 par value) of the Company.

(r) "*Stock Option Agreement*" shall mean the agreement between the Company and an Optionee that contains the terms, conditions and restrictions pertaining to his or her Option.

(s) "*Subsidiary*" shall mean any corporation, if the Company and/or one or more other Subsidiaries own not less than 50 percent of the total combined voting power of all classes of outstanding stock of such corporation. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

(t) "*Total and Permanent Disability*" shall mean that the Optionee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than one year.

SECTION 3. STOCK SUBJECT TO PLAN.

(a) Basic Limitation. Shares offered under the Plan shall be authorized but unissued Shares or treasury Shares. The aggregate number of Shares which may be issued under the Plan shall not exceed 1,100,000 Shares, subject to adjustment pursuant to Section 6. The number of Shares that are subject to Options at any time shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan.

(b) Additional Shares. In the event that any outstanding Option for any reason expires or is canceled or otherwise terminated, the Shares allocable to the unexercised portion of such Option shall again be available for the purposes of the Plan.

SECTION 4. TERMS AND CONDITIONS OF OPTIONS.

(a) Stock Option Agreement. Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions that are not inconsistent with the Plan and that the Board of Directors deems appropriate for inclusion in a Stock Option Agreement.

(b) Initial Grants. Each new Nonemployee Director who first joins the Board of Directors after March 30, 2001 shall receive an Option covering 30,000 Shares within one business day after his or her initial election to the Board of Directors. The number of Shares included in an Option shall be subject to adjustment under Section 6.

(c) Annual Grants. On the first business day following the conclusion of each regular annual meeting of the Company's stockholders, each Nonemployee Director who will continue serving as a member of the Board of Directors thereafter shall receive an Option covering 10,000 Shares, subject to adjustment under Section 6. Each Nonemployee Director who is not initially elected at a regular annual meeting of the Company's stockholders shall receive an Option to purchase a pro rata portion of 10,000 Shares within ten business days of such Director's election based on the number of full months remaining from date of election until the next regular annual meeting of the Company's stockholders divided by twelve. Any fractional shares resulting from such calculation shall be rounded up to the nearest whole number.

(d) Exercise Price. The Exercise Price under each Option shall be equal to 100 percent of the Fair Market Value of the Stock subject to such Option on the date when such Option is granted. The entire Exercise Price of Shares issued under the Plan shall be payable in cash when such Shares are purchased, except as follows:

(i) Payment may be made all or in part with Shares that have already been owned by the Optionee or the Optionee's representative for more than six months and that are surrendered to the Company in good form for transfer. Such Shares shall be valued at their Fair Market Value on the date when the new Shares are purchased under the Plan.

(ii) Payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(iii) Payment may be made all or in part by the delivery (on a form prescribed by the Company) of an irrevocable direction to pledge Shares to a securities broker or lender approved by the Company, as security for a loan, and to deliver all or part of the

loan proceeds to the Company in payment of all or part of the Exercise Price and any withholding taxes.

(e) Vesting. Each Option granted under Subsection (b) above shall become exercisable (i) as to one-fourth (1/4) of the total number of shares covered by such Option on the first anniversary of the date of grant and (ii) as to one-forty-eighth (1/48) of the total number of shares covered by such Option on each of a series of thirty-six (36) monthly installments thereafter. Except as set forth in the next succeeding sentence and in the last sentence of this Subsection (e), each Option granted under Subsection (c) above shall become exercisable in full on the first anniversary of the date of grant. Except as set forth in the last sentence of this Subsection (e), each Option granted under Subsection (c) to Nonemployee Directors who were not initially elected at a regular annual meeting of the Company's stockholders shall become exercisable in full at the next regular annual meeting of the Company's stockholders following the date of grant. Notwithstanding the foregoing, each Option granted under Subsection (c) above that is outstanding shall become exercisable in full in the event that a Change in Control occurs with respect to the Company.

(f) Term of Options. Subject to Subsections (g) and (h) below, each Option shall expire on the 10th anniversary of the date when such Option was granted.

(g) Termination of Service (Except by Death). If an Optionee's Service terminates for any reason other than death, then his or her Options shall expire on the earliest of the following occasions:

(i) The expiration date determined pursuant to Subsection (f) above;

(ii) The date 24 months after the termination of the Optionee's Service, if the termination occurs because of his or her Total and Permanent Disability; or

(iii) The date six months after the termination of the Optionee's Service for any reason other than Total and Permanent Disability.

The Optionee may exercise all or part of his or her Options at any time before the expiration of such Options under the preceding sentence, but only to the extent that such Options had become exercisable before his or her Service terminated. The balance of such Options shall lapse when the Optionee's Service terminates. In the event that the Optionee dies after the termination of his or her Service but before the expiration of his or her Options, all or part of such Options may be exercised at any time prior to their expiration by the executors or administrators of the Optionee's estate or by any person who has acquired such Options directly from him or her by bequest, inheritance or beneficiary designation under the Plan, but only to the extent that such Options had become exercisable before his or her Service terminated.

(h) Death of Optionee. If an Optionee dies while he or she is in Service, then his or her Options shall expire on the earlier of the following dates:

(i) The expiration date determined pursuant to Subsection (f) above; or

(ii) The date 24 months after his or her death.

All or part of the Optionee's Options may be exercised at any time before the expiration of such Options under the preceding sentence by the executors or administrators of his or her estate or by any person who has acquired such Options directly from him or her by bequest, inheritance or beneficiary designation under the Plan.

(i) Nontransferability. No Option shall be transferable by the Optionee other than by will, by written beneficiary designation or by the laws of descent and distribution. An Option may be exercised during the lifetime of the Optionee only by the Optionee or by the Optionee's guardian or legal representative. No Option or interest therein may be transferred, assigned, pledged or hypothecated by the Optionee during his or her lifetime, whether by operation of law or otherwise, or be made subject to execution, attachment or similar process.

(j) Stockholder Approval. Subsection (e) above notwithstanding, no Option shall be exercisable under any circumstances unless and until the Company's stockholders have approved the Plan.

(k) Notwithstanding the foregoing, the Board of Directors may from time to time increase the number of Shares subject to an initial or annual grant of Options under Subsection (b) or (c) above to any Nonemployee Director to the extent the Board of Directors determines necessary to induce a Nonemployee Director to become or remain a Nonemployee Director or to reflect an increase in the duties or responsibilities of the Nonemployee Director, subject to all terms and conditions of the Plan otherwise applicable to grants of Options, except that the Exercise Price under each such Option may be equal to or greater than one hundred percent (100%) of the Fair Market Value of the Stock subject to the Option on the date when such Option is granted and each such Option may become exercisable on the same schedule as set forth in Subsection (e) or on a lengthier schedule, as the Board of Directors in each case shall determine.

SECTION 5. MISCELLANEOUS PROVISIONS.

(a) No Rights as a Stockholder. An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by his or her Option until he or she becomes entitled, pursuant to the terms of such Option, to receive such Shares. No adjustment shall be made, except as provided in Section 6.

(b) Modification, Extension and Assumption of Options. Within the limitations of the Plan, the Board of Directors may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Company or another issuer) in return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair such Optionee's rights or increase his or her obligations under such Option.

(c) Restrictions on Issuance of Shares. Shares shall not be issued under the Plan unless the issuance and delivery of such Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as

amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange on which the Company's securities may then be listed. The Company may impose restrictions upon the sale, pledge or other transfer of such Shares (including the placement of appropriate legends on stock certificates) if, in the judgment of the Company and its counsel, such restrictions are necessary or desirable in order to achieve compliance with the provisions of the Securities Act of 1933, as amended, the securities laws of any state or any other law.

(d) Withholding Taxes. The Company's obligation to deliver Stock upon the exercise of an Option shall be subject to any applicable tax withholding requirements.

(e) No Retention Rights. No provision of the Plan, nor any Option granted under the Plan, shall be construed as giving any person the right to be elected as, or to be nominated for election as, a Nonemployee Director or to remain a Nonemployee Director.

SECTION 6. ADJUSTMENT OF SHARES.

(a) General. In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a declaration of a dividend payable in a form other than Shares in an amount that has a material effect on the value of Shares, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a recapitalization, a spin-off, a reclassification or a similar occurrence, the Board of Directors shall make appropriate adjustments in one or more of (i) the number of Options available for future grants under Section 3, (ii) the number of Shares to be covered by each new Option under Section 4, (iii) the number of Shares covered by each outstanding Option or (iv) the Exercise Price under each outstanding Option.

(b) Reorganizations. In the event that the Company is a party to a merger or other reorganization, outstanding Options shall be subject to the agreement of merger or reorganization. Such agreement shall provide (i) for the assumption of outstanding Options by the surviving corporation or its parent, (ii) for their continuation by the Company, if the Company is a surviving corporation, (iii) for payment of a cash settlement equal to the difference between the amount to be paid for one Share pursuant to such agreement and the Exercise Price or (iv) for the acceleration of their exercisability followed by the cancellation of Options not exercised, in all cases without the Optionees' consent. Any cancellation shall not occur until after such acceleration is effective and Optionees have been notified of such acceleration.

(c) Reservation of Rights. Except as provided in this Section 6, an Optionee shall have no rights by reason of (i) any subdivision or consolidation of shares of stock of any class, (ii) the payment of any dividend or (iii) any other increase or decrease in the number of shares of stock of any class. Any issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or Exercise Price of Shares subject to an Option. The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its

capital or business structure, to merge or consolidate or to dissolve, liquidate, sell or transfer all or any part of its business or assets.

SECTION 7. DURATION AND AMENDMENTS.

(a) Term of the Plan. The Plan shall become effective on the date of its adoption by the Board of Directors, subject to approval of the Company's stockholders. The Plan shall remain in effect until it is terminated under Subsection (b) below.

(b) Right to Amend or Terminate the Plan. The Board of Directors may amend, suspend or terminate the Plan at any time and for any reason, except that the provisions of the Plan relating to the amount, price and timing of Option grants shall not be amended more than once in any six-month period. Any amendment of the Plan shall be subject to the approval of the Company's stockholders to the extent required by applicable laws, regulations, rules, listing standards or other requirements, including (without limitation) Rule 16b-3 under the Exchange Act. Stockholder approval shall not be required for any other amendment of the Plan.

(c) Effect of Amendment or Termination. No Shares shall be issued or sold under the Plan after the termination thereof, except upon exercise of an Option granted prior to such termination. The termination of the Plan, or any amendment thereof, shall not affect any Option previously granted under the Plan.

SECTION 8. EXECUTION.

To record the amendment of the Plan as of June 23, 2003, the Company has caused its authorized officer to execute the same.

INCYTE CORPORATION

By /s/ LEE BENDERGEY

Title Executive Vice President

INCYTE CORPORATION

1997 EMPLOYEE STOCK PURCHASE PLAN

(as amended April 15, 2003)

The following constitute the provisions of the 1997 Employee Stock Purchase Plan of Incyte Corporation, as amended April 15, 2003.

1. Purpose. The purpose of the Plan is to provide employees of the Company and its Designated Subsidiaries with an opportunity to purchase Common Stock of the Company through accumulated payroll deductions. It is the intention of the Company to have the Plan qualify as an "Employee Stock Purchase Plan" under Section 423 of the Internal Revenue Code of 1986, as amended. The provisions of the Plan, accordingly, shall be construed so as to extend and limit participation in a manner consistent with the requirements of that section of the Code.

2. Definitions.

(a) "Board" shall mean the Board of Directors of the Company.

(b) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(c) "Common Stock" shall mean the Common Stock, $.001 par value, of Incyte Corporation.

(d) "Company" shall mean Incyte Corporation and any Designated Subsidiary of the Company.

(e) "Compensation" shall mean all cash salary, wages, commissions and bonuses, but shall not include any imputed income or income arising from the exercise or disposition of equity compensation.

(f) "Effective Date" shall mean April 15, 2003.

(g) "Designated Subsidiary" shall mean any Subsidiary which has been designated by the Board from time to time in its sole discretion as eligible to participate in the Plan.

(h) "Employee" shall mean any individual who is an Employee of the Company for tax purposes whose customary employment with the Company is at least twenty (20) hours per week and more than five (5) months in any calendar year. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company. Where the period of leave exceeds 90 days and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the 91st day of such leave.

(i) "Enrollment Date" shall mean the first day of each Offering Period.

(j) "Exercise Date" shall mean the last Trading Day of each Purchase Period.

(k) "Fair Market Value" shall mean, as of any date, the value of Common Stock determined as follows:

(1) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation The Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the date of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(2) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean of the closing bid and asked prices for the Common Stock on the date of such determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable; or

(3) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Board.

(l) "Offering Periods" shall mean the periods of approximately twenty-four (24) months during which an option granted pursuant to the Plan may be exercised, commencing on the first Trading Day on or after May 1 and November 1 of each year and terminating on the last Trading Day in the periods ending twenty-four months later. The duration and timing of Offering Periods may be changed pursuant to Section 4 of this Plan.

(m) "Plan" shall mean this Employee Stock Purchase Plan.

(n) "Purchase Price" shall mean an amount equal to 85% of the Fair Market Value of a share of Common Stock on the Enrollment Date or on the Exercise Date, whichever is lower.

(o) "Purchase Period" shall mean the approximately six-month period commencing after one Exercise Date and ending with the next Exercise Date, except that the first Purchase Period of any Offering Period shall commence on the Enrollment Date and end with the next Exercise Date.

(p) "Reserves" shall mean the number of shares of Common Stock covered by each option under the Plan which have not yet been exercised and the number of shares of Common Stock which have been authorized for issuance under the Plan but not yet placed under option.

(q) "Subsidiary" shall mean a corporation, domestic or foreign, of which not less than 50% of the voting shares are held by the Company or a Subsidiary, whether or not such corporation now exists or is hereafter organized or acquired by the Company or a Subsidiary.

(r) "Trading Day" shall mean a day on which national stock exchanges and The Nasdaq National Market (or any successor market system) are open for trading.

3. Eligibility.

(a) Any Employee who has been employed by the Company for one month or more on a given Enrollment Date shall be eligible to participate in the Plan.

(b) Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) to the extent that, immediately after the grant, such Employee (or any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company and/or hold outstanding options to purchase such stock possessing five percent (5%) or more of the total combined voting power or value of all classes of the capital stock of the Company or of any Subsidiary, or (ii) to the extent that his or her rights to purchase stock under all employee stock purchase plans of the Company and its subsidiaries accrues at a rate which exceeds Twenty-Five Thousand Dollars ($25,000) worth of stock (determined at the fair market value of the shares at the time such option is granted) for each calendar year in which such option is outstanding at any time.

4. Offering Periods. The Plan shall be implemented by consecutive, overlapping Offering Periods with a new Offering Period commencing on the first Trading Day on or after May 1 and November 1 each year, or on such other dates as the Board shall determine, and continuing thereafter until terminated in accordance with Section 19 hereof. The Board or a committee thereof shall have the power to change the duration of Offering Periods (including the commencement dates thereof) and Purchase Periods thereunder with respect to future offerings without stockholder approval if such change is announced at least five (5) days prior to the scheduled beginning of the first Offering Period to be affected thereafter.

5. Participation.

(a) An eligible Employee may become a participant in the Plan by completing a subscription agreement authorizing payroll deductions in the form of Exhibit A to this Plan and filing it with the Company's stock administrator not later than ten (10) business days prior to the applicable Enrollment Date.

(b) Payroll deductions for a participant shall commence on the first payroll following the Enrollment Date and shall end on the last payroll in the Offering Period to which such authorization is applicable, unless sooner terminated by the participant as provided in Section 10 hereof.

6. Payroll Deductions.

(a) At the time a participant files his or her subscription agreement, he or she shall elect to have payroll deductions made on each pay day during the Offering Period in an amount not less than one percent (1%) and not more than ten percent (10%) of the participant's Compensation, with such amount designated in integral multiples of one percent (1%); provided, however, that the aggregate of such payroll deductions during any Offering Period shall not

exceed ten percent (10%) of the participant's aggregate Compensation during such Offering Period.

(b) All payroll deductions made for a participant shall be credited to his or her account under the Plan and shall be withheld in whole percentages only. A participant may not make any additional payments into such account.

(c) A participant may discontinue his or her participation in the Plan as provided in Section 10, or may increase or decrease the rate of his or her payroll deductions as provided in this Section 6(c). A participant may increase the rate of his or her payroll deductions only as of the beginning of a Purchase Period. Such increase shall take effect with the first payroll following the beginning of the new Purchase Period provided the participant has completed and delivered to the Company's stock administrator a new subscription agreement authorizing the increase in the payroll deduction rate at least ten (10) business days prior to the beginning of the new Purchase Period. A participant may decrease the rate of his or her payroll deductions each month. Any decrease shall become effective as of the first payroll of the next calendar month following the date that the participant completes and delivers to the Company's stock administrator a new subscription agreement authorizing the decrease in the payroll deduction rate. However, if the subscription agreement is not received at least five (5) business days prior to such payroll, the decrease shall become effective as of the first payroll of the second succeeding calendar month. The Board may, in its discretion, limit the number of participation rate changes during any Offering Period. Subject to the foregoing, a participant's subscription agreement shall remain in effect for successive Offering Periods unless terminated as provided in Section 10 hereof.

(d) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(b) hereof, a participant's payroll deductions may be decreased to zero percent (0%) at any time during a Purchase Period. Such a decrease shall not be treated as a withdrawal from the Plan subject to Section 10, unless the participant elects to withdraw pursuant to Section 10. Payroll deductions shall recommence at the rate provided in such participant's subscription agreement at the beginning of the first Purchase Period which is scheduled to end in the following calendar year, unless the participant elects to withdraw from the Plan as provided in Section 10 hereof.

(e) At the time the option is exercised, in whole or in part, or at the time some or all of the Common Stock issued under the Plan is disposed of, the participant must make adequate provision for the Company's federal, state, or other tax withholding obligations, if any, which arise upon the exercise of the option or the disposition of the Common Stock. At any time, the Company may, but shall not be obligated to, withhold from the participant's compensation the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefits attributable to sale or early disposition of Common Stock by the Employee.

7. Grant of Option. On the Enrollment Date of each Offering Period, each eligible Employee participating in such Offering Period shall be granted an option to purchase on each Exercise Date during such Offering Period (at the applicable Purchase Price) up to a number of

shares of Common Stock determined by dividing such Employee's payroll deductions accumulated prior to such Exercise Date and retained in the Participant's account as of the Exercise Date by the applicable Purchase Price; provided that in no event shall an Employee be permitted to purchase during each Purchase Period more than eight thousand (8,000) shares of Common Stock (subject to any adjustment pursuant to Section 18) on the Enrollment Date, and provided further that such purchase shall be subject to the limitations set forth in Sections 3(b) and 13 hereof. Exercise of the option shall occur as provided in Section 8 hereof, unless the participant has withdrawn pursuant to Section 10 hereof. The option shall expire on the last day of the Offering Period.

8. Exercise of Option. Unless a participant withdraws from the Plan as provided in Section 10 hereof, his or her option for the purchase of shares of Common Stock shall be exercised automatically on the Exercise Date, and the maximum number of full shares of Common Stock subject to option shall be purchased for such participant at the applicable Purchase Price with the accumulated payroll deductions in his or her account. No fractional shares shall be purchased; any payroll deductions accumulated in a participant's account which are not sufficient to purchase a full share shall be retained in the participant's account for the subsequent Purchase Period or Offering Period, subject to earlier withdrawal by the participant as provided in Section 10 hereof. Any other monies left over in a participant's account after the Exercise Date shall be returned to the participant. During a participant's lifetime, a participant's option to purchase shares hereunder is exercisable only by him or her.

9. Delivery. As promptly as practicable after each Exercise Date on which a purchase of shares occurs, a share certificate or certificates representing the number of shares of Common Stock so purchased shall be delivered to a brokerage account designated by the Company and kept in such account pursuant to a subscription agreement between each participant and the Company and subject to the conditions described therein which may include a requirement that shares be held and not sold for certain time periods, or the Company shall establish some other means for such participants to receive ownership of the shares.

10. Discontinuation; Withdrawal.

(a) A participant may discontinue his or her participation in the Plan only by withdrawing from the Plan as provided in this Section 10. A participant may withdraw all but not less than all the payroll deductions credited to his or her account and not yet used to exercise his or her option under the Plan by giving written notice to the Company in the form of Exhibit B to this Plan. Such notice must be received by the Company no later than 2:00 p.m. Pacific Standard Time on the second Trading Day preceding the Exercise Date. All of the participant's payroll deductions credited to his or her account shall be paid to such participant promptly after receipt of notice of withdrawal and such participant's option for the Offering Period shall be automatically terminated, and no further payroll deductions for the purchase of shares shall be made for such Offering Period. If a participant withdraws from an Offering Period, payroll deductions shall not resume at the beginning of the succeeding Offering Period unless the participant delivers to the Company a new subscription agreement in accordance with Section 5(a).

(b) A participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan which may hereafter be adopted by the Company or in succeeding Offering Periods which commence after the participant withdraws from the Plan, subject to compliance with Section 5(a).

11. Termination of Employment.

Upon a participant's ceasing to be an Employee, for any reason, he or she shall be deemed to have elected to withdraw from the Plan and the payroll deductions credited to such participant's account during the Offering Period but not yet used to exercise the option shall be returned to such participant or, in the case of his or her death, to the person or persons entitled thereto under Section 15 hereof, and such participant's option shall be automatically terminated. The preceding sentence notwithstanding, a participant who receives payment in lieu of notice of termination of employment shall be treated as continuing to be an Employee for the participant's customary number of hours per week of employment during the period in which the participant is subject to such payment in lieu of notice.

12. Interest. No interest shall accrue on the payroll deductions of a participant in the Plan.

13. Stock.

(a) The maximum number of shares of the Company's Common Stock which shall be made available for sale under the Plan shall be three million one hundred thousand (3,100,000) shares, subject to adjustment upon changes in capitalization of the Company as provided in Section 18 hereof. If, on a given Exercise Date, the number of shares with respect to which options are to be exercised exceeds the number of shares then available under the Plan, the Company shall make a pro rata allocation of the shares remaining available for purchase in as uniform a manner as shall be practicable and as it shall determine to be equitable.

(b) The participant shall have no interest or voting right in shares covered by his option until such option has been exercised.

(c) Shares purchased by a participant under the Plan shall be registered in the name of the participant or in the name of the participant and his or her spouse.

14. Administration. The Plan shall be administered by the Board or a committee of members of the Board appointed by the Board. The Board or its committee shall have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility and to adjudicate all disputed claims filed under the Plan. Every finding, decision and determination made by the Board or its committee shall, to the full extent permitted by law, be final and binding upon all parties.

15. Designation of Beneficiary.

(a) A participant may file a written designation of a beneficiary who is to receive any shares and cash, if any, from the participant's account under the Plan in the event of such participant's death subsequent to an Exercise Date on which the option is exercised but

prior to delivery to such participant of such shares and cash. In addition, a participant may file a written designation of a beneficiary who is to receive any cash from the participant's account under the Plan in the event of such participant's death prior to exercise of the option. If a participant is married and the designated beneficiary is not the spouse, spousal consent shall be required for such designation to be effective.

(b) Such designation of beneficiary may be changed by the participant at any time by written notice. In the event of the death of a participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

16. Transferability. Neither payroll deductions credited to a participant's account nor any rights with regard to the exercise of an option or to receive shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 15 hereof) by the participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw funds from an Offering Period in accordance with Section 10 hereof.

17. Use of Funds. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions.

18. Adjustments Upon Changes in Capitalization, Dissolution, Liquidation, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the stockholders of the Company, the Reserves, the maximum number of shares each participant may purchase each Purchase Period (pursuant to Section 7), as well as the Purchase Price per share and the number of shares of Common Stock covered by each option under the Plan which has not yet been exercised shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of outstanding shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration". Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an option.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Offering Periods shall terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Board.

(c) Merger or Asset Sale. In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, limited liability company or other entity, the Plan shall terminate upon the date of the consummation of such transaction unless the plan of merger, consolidation or reorganization provides otherwise, and any Purchase Periods then in progress shall be shortened by setting a new Exercise Date (the "New Exercise Date") and any Offering Periods then in progress shall end on the New Exercise Date. The New Exercise Date shall be before the date of the Company's proposed sale or merger. The Board shall notify each participant in writing, at least ten (10) business days prior to the New Exercise Date, that the Exercise Date for the participant's option has been changed to the New Exercise Date and that the participant's option shall be exercised automatically on the New Exercise Date, unless prior to such date the participant has withdrawn from the Offering Period as provided in Section 10 hereof. The Plan shall in no event be construed to restrict the Company's right to undertake any liquidation, dissolution, merger, consolidation or other reorganization.

19. Amendment or Termination.

(a) The Board of Directors of the Company may at any time and for any reason terminate or amend the Plan. Except as provided in Section 18 hereof, no such termination can affect options previously granted, provided that an Offering Period may be terminated by the Board of Directors on any Exercise Date if the Board determines that the termination of the Plan is in the best interests of the Company and its stockholders. Except as provided in Section 18 hereof, no amendment may make any change in any option theretofore granted which adversely affects the rights of any participant. To the extent necessary to comply with Section 423 of the Code (or any successor rule or provision or any other applicable law, regulation or stock exchange rule), the Company shall obtain stockholder approval in such a manner and to such a degree as required.

(b) Without stockholder consent and without regard to whether any participant rights may be considered to have been "adversely affected," the Board (or its committee) shall be entitled to change the Offering Periods, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each participant properly correspond with amounts withheld from the participant's Compensation, and establish such other limitations or procedures as the Board (or its committee) determines in its sole discretion advisable which are consistent with the Plan.

20. Notices. All notices or other communications by a participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in

the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

21. Conditions Upon Issuance of Shares. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

22. Term of Plan. The Plan, as amended and restated, shall become effective upon the Effective Date. It shall continue until February 27, 2007 unless sooner terminated under Section 19 hereof.

23. Automatic Transfer to Low Price Offering Period. To the extent permitted by any applicable laws, regulations, or stock exchange rules, if the Fair Market Value of the Common Stock on any Exercise Date in an Offering Period is lower than the Fair Market Value of the Common Stock on the Enrollment Date of such Offering Period, then all participants in such Offering Period shall be automatically withdrawn from such Offering Period immediately after the exercise of their option on such Exercise Date and automatically re-enrolled in the immediately following Offering Period as of the first day thereof.

24. Execution. To record the amendment and restatement of the Plan by the Board of Directors as of the Effective Date, the Company has caused its authorized officer to execute the same.

INCYTE CORPORATION

By /s/ LEE BENDEKGEY

Its Executive Vice President

EXHIBIT A

INCYTE CORPORATION

1997 EMPLOYEE STOCK PURCHASE PLAN

SUBSCRIPTION AGREEMENT

Enrollment Date: _____

____ Original Application
____ Change in Payroll Deduction Rate
____ Change of Beneficiary(ies)

(1) _____ hereby elects to participate in the Incyte Corporation 1997 Employee Stock Purchase Plan (the "Employee Stock Purchase Plan") and subscribes to purchase shares of the Company's Common Stock in accordance with this Subscription Agreement and the Employee Stock Purchase Plan.

(2) I hereby authorize payroll deductions from each paycheck in the amount of ____ % of my Compensation (as defined in the Employee Stock Purchase Plan) on each payday (from 1 to 10%) during the Offering Period in accordance with the Employee Stock Purchase Plan. (Please note that no fractional percentages are permitted.)

(3) I understand that these payroll deductions will be accumulated for the purchase of shares of Common Stock at the applicable Purchase Price determined in accordance with the Employee Stock Purchase Plan. I understand that if I do not withdraw from an Offering Period, any accumulated payroll deductions will be used to automatically exercise my option to purchase shares.

(4) I have received a copy of the complete Employee Stock Purchase Plan. I understand that my participation in the Employee Stock Purchase Plan is in all respects subject to the terms of such Plan. I understand that my ability to exercise the option under this Subscription Agreement is subject to stockholder approval of the Employee Stock Purchase Plan.

(5) Shares purchased for me under the Employee Stock Purchase Plan should be deposited in my brokerage account with _____ [name of broker], or issued in the name(s) of (Employee or Employee and Spouse only):

_____.

(6) I understand that if I dispose of any shares received by me pursuant to the Plan within 2 years after the Enrollment Date (the first day of the Offering Period during which I purchased such shares) or one year after the Exercise Date, I will be treated for federal income tax purposes as having received ordinary income at the time of such disposition in an amount equal to the excess of the fair market value of the shares at the time such shares were purchased by me over the price which I paid for the shares. I hereby agree to

notify the Company in writing within 30 days after the date of any disposition of my shares and I will make adequate provision for Federal, state or other tax withholding obligations, if any, which arise upon the disposition of the Common Stock. The Company may, but will not be obligated to, withhold from any compensation the amount necessary to meet any applicable withholding obligation including any withholding necessary to make available to the Company any tax deductions or benefits attributable to sale or early disposition of Common Stock by me. If I dispose of such shares at any time after the expiration of the 2-year and 1-year holding periods, I understand that I will be treated for federal income tax purposes as having received income only at the time of such disposition, and that such income will be taxed as ordinary income only to the extent of an amount equal to the lesser of (1) the excess of the fair market value of the shares at the time of such disposition over the purchase price which I paid for the shares; or (2) 15% of the fair market value of the shares on the first day of the Offering Period. The remainder of the gain, if any, recognized on such disposition will be taxed as capital gain.

(7) I hereby agree to be bound by the terms of the Employee Stock Purchase Plan. The effectiveness of this Subscription Agreement is dependent upon my eligibility to participate in the Employee Stock Purchase Plan.

(8) In the event of my death, I hereby designate the following as my beneficiary(ies) to receive all payments and shares due me under the Employee Stock Purchase Plan:

NAME: (Please print) _____

(First) (Middle) (Last)

_____ _____

(Relationship)

_____

(Address)

Employee's Social Security Number: _____

Employee's Address: _____

I UNDERSTAND THAT THIS SUBSCRIPTION AGREEMENT SHALL REMAIN IN EFFECT THROUGHOUT SUCCESSIVE OFFERING PERIODS UNLESS TERMINATED BY ME. I HAVE RECEIVED A COPY OF THE COMPLETE EMPLOYEE STOCK PURCHASE PLAN AND UNDERSTAND THAT MY PARTICIPATION IN SUCH PLAN IS IN ALL RESPECTS SUBJECT TO THE TERMS OF SUCH PLAN.

Dated: _____ _____

Signature of Employee

_____

Spouse's Signature
(If beneficiary other than spouse)

EXHIBIT B

INCYTE CORPORATION

1997 EMPLOYEE STOCK PURCHASE PLAN

NOTICE OF WITHDRAWAL

The undersigned participant in the Offering Period of the Incyte Corporation 1997 Employee Stock Purchase Plan which began on _____, _____ (the "Enrollment Date") hereby notifies the Company that he or she hereby withdraws from the Offering Period. He or she hereby directs the Company to pay to the undersigned as promptly as practicable all the payroll deductions credited to his or her account with respect to the Offering Period. The undersigned understands and agrees that his or her option for such Offering Period will be automatically terminated. The undersigned understands further that no further payroll deductions will be made for the purchase of shares in the current Offering Period and the undersigned shall be eligible to participate in succeeding Offering Periods only by delivering to the Company a new Subscription Agreement. The undersigned has received a copy of the complete Employee Stock Purchase Plan, and understands that his or her participation in the Employee Stock Purchase Plan is in all respects subject to the terms of such Plan.

Name and Address of Participant:

_____

_____

_____

Signature:

_____

Date: _____

PLEASE RETURN FORM TO MARILYN PASQUINELLI IN STOCK ADMINISTRATION
OR FAX TO (650) 621-7532.

APPENDIX A

EMPLOYEES OF INCYTE CORPORATION LTD

Gains on options exercised under the Plan by Employees who are employed by Incyte Corporation Ltd ("Limited") are subject to National Insurance Contributions under United Kingdom Social Security Contributions and Benefits Act 1992, section 4(4)(a) ("Secondary Contributions"). Secondary Contributions are payable by Limited unless Limited and the Employee enter into a joint election in the form attached hereto as Exhibit A to transfer liability for payment of the Secondary Contributions to the Employee (the "Joint Election"). Effective January 1, 2001, any Employee of Limited who wishes to exercise options granted pursuant to the Plan must enter into a Joint Election in accordance with the following provisions:

A.1 Filing Date for Current Participants. Employees of Limited who enrolled in the Plan prior to October 31, 2001 and who have not withdrawn from the Plan must file the Joint Election with the Company's stock administrator not later than ten (10) business days prior to October 31, 2001. Any such Employee who fails to file the Joint Election in a timely manner will be deemed to have withdrawn from the Plan prior to October 31, 2001 and his or her option or options will not be exercised on the Exercise Date falling on October 31, 2001.

A.2 New Participants. An eligible Employee of Limited who wishes to become a participant in the Plan on or after November 1, 2001 must file a Joint Election with the Company's stock administrator at least ten (10) business days prior to the applicable Enrollment Date. An eligible Employee who does not file a Joint Election will not be granted an option under the Plan.

A.3 Amendment of the Joint Election; Approval. The form for the Joint Election, as it may be amended by the Company from time to time, shall be submitted to the Board of Inland Revenue for approval and such approval shall be obtained before the Company and an eligible Employee enter into a particular Joint Election. A Joint Election may be amended in a writing signed by both the Company and the Employee, provided that any such amendment must be approved by the Board of Inland Revenue before it takes effect.

A.4 Effect of Withdrawal from the Plan. If a participant withdraws from the Plan, the Joint Election shall continue to apply in the event that the Employee re-enrolls in the Plan.

SUBLEASE

BY AND BETWEEN

E. I. DU PONT DE NEMOURS AND COMPANY

AND

INCYTE CORPORATION

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EXHIBITS

SUBLEASE – EXPERIMENTAL STATION

SUBLEASE AGREEMENT

1. DATE OF SUBLEASE; PARTIES. THIS SUBLEASE AGREEMENT (this "Sublease") is made this 16th day of June, 2003, by and between E. I. DU PONT DE NEMOURS AND COMPANY, a Delaware corporation ("SUBLANDLORD") or ("DuPont"), and INCYTE CORPORATION, a Delaware corporation ("SUBTENANT").

2. SUBLEASED PREMISES.

(a) Subleased Premises. SUBLANDLORD hereby subleases to SUBTENANT, and SUBTENANT hereby rents from SUBLANDLORD, a portion of Building E-400 and a portion of Building E-336, which is more particularly shown on Exhibit "A" attached hereto and made a part hereof, including loading areas, lobbies and hallways (collectively, the "SUBLEASED PREMISES"). The Building Space is located within SUBLANDLORD's Experimental Station situated at Route 141 and Powder Mill Road in the County of New Castle, State of Delaware (the "Shared Site"). SUBLANDLORD and SUBTENANT have agreed that the space to be occupied by SUBTENANT in Building E-336 contains 56,906 rentable square feet and the space to be occupied by SUBTENANT in Building E-400 contains 30,387 rentable square feet. The subleasing of the SUBLEASED PREMISES includes (i) all laboratory hoods and work bench stations (and appurtenances to the foregoing, but excluding detachable biosafety cabinets), if any, located therein and all other property located therein which, by reason of intention, annexation, unity, attachment or adaptation for particular use, may fairly be deemed fixtures under applicable law ("Fixtures"), (ii) the right to use the parking spaces shown on Exhibit "A" and those in Overflow Parking Lot 1 (collectively, the "Parking Spaces"), and (iii) the right, in common with SUBLANDLORD and other occupants of the Shared Site, to use internal roads, driveways, sidewalks and other appurtenances of the Shared Site commonly used by the occupants of the Shared Site, including without limitation the Cafeteria located in Building E-444 (collectively, "Common Areas"). SUBTENANT acknowledges that, except as expressly set forth in this Sublease, SUBTENANT is not relying on any statement or representation that has been made by SUBLANDLORD or any of SUBLANDLORD's employees, agents, attorneys or representatives concerning the condition of the SUBLEASED PREMISES (whether relating to physical conditions, operation, performance or legal matters).

(b) Right of First Offer for Additional Space. If, during the Term (defined in subparagraph 3(a) below), SUBLANDLORD shall desire to make available to one its own business groups or to an affiliate any or all of the additional space in the Building E-400 or Building E-336, which additional space is identified as year 2004 and year 2005 on the Exhibit "A" attached hereto (the "Additional Space"), SUBLANDLORD shall first notify SUBTENANT in writing of such desire and identify the relevant portion of the Additional Space. In such event, SUBLANDLORD hereby gives and grants to SUBTENANT the right of first offer to sublease the portion of the Additional Space identified in SUBLANDLORD'S notice (the "ROFO Space"). If SUBTENANT wishes to exercise such right, SUBTENANT shall notify SUBLANDLORD of its intent to sublease within 10 business days following SUBTENANT's receipt of SUBLANDLORD's notice. If SUBTENANT does exercise such right,

SUBLANDLORD shall be obligated to sublease the ROFO Space to SUBTENANT on the date specified in SUBTENANT's exercise notice, which date (the "ROFO Delivery Date") shall be no later than 20 business days after the date of SUBTENANT's exercise notice. Effective on the ROFO Delivery Date, (i) the ROFO Space shall be added to and become a part of the SUBLEASED PREMISES, (ii) the representations and warranties of SUBLANDLORD in Paragraph 9 below shall be deemed to be re-made with respect to the ROFO Space, and (iii) the base rent shall be the same on a rentable square foot basis as is then charged for the balance of the SUBLEASED PREMISES. Should SUBTENANT fail to notify SUBLANDLORD within the prescribed 10 business day period, SUBLANDLORD shall be free to sublease the ROFO Space, free and clear of all restrictions otherwise imposed by this subparagraph 2(b), but SUBTENANT's rights with respect to the remaining portion of the Additional Space shall continue. Notwithstanding that SUBTENANT should fail or refuse to exercise its right of first offer, if the ROFO Space is not subleased or used by SUBLANDLORD within three (3) months after SUBLANDLORD's notice, then SUBTENANT's right of first offer and provisions of this subparagraph 2(b) shall be reinstated.

(c) Right of First Refusal for Additional Space. If, during the Term, SUBLANDLORD shall receive, and wish to accept, a bona fide offer for the sublease of any or all of the Additional Space, SUBLANDLORD shall first notify SUBTENANT in writing of such offer and provide to SUBTENANT a copy of the offer. In such event, SUBLANDLORD hereby gives and grants unto SUBTENANT the right of first refusal to sublease the portion of the Additional Space identified in SUBLANDLORD'S notice (the "ROFR Space"). If SUBTENANT wishes to exercise such right, SUBTENANT shall notify SUBLANDLORD of its intent to sublease within 10 business days following SUBTENANT's receipt of SUBLANDLORD's notice. If SUBTENANT does exercise such right, SUBLANDLORD shall be obligated to sublease the ROFR Space to SUBTENANT on the date specified in SUBTENANT's exercise notice, which date (the "ROFR Delivery Date") shall be no later than 20 business days after the date of SUBTENANT's exercise notice. Effective on the ROFR Delivery Date, (i) the ROFR Space shall be added to and become a part of the SUBLEASED PREMISES, (ii) the representations and warranties of SUBLANDLORD in Paragraph 9 below shall be deemed to be re-made with respect to the ROFR Space, and (iii) the base rent shall be the same on a rentable square foot basis as is then charged for the balance of the SUBLEASED PREMISES. Should SUBTENANT fail to notify SUBLANDLORD within the prescribed 10 business day period, SUBLANDLORD shall be free to sublease the ROFR Space, free and clear of all restrictions otherwise imposed by this subparagraph 2(c), but SUBTENANT's rights with respect to the remaining portion of the Additional Space shall continue. Notwithstanding that SUBTENANT should fail or refuse to exercise its right of first refusal, if the ROFR Space is not subleased or used by SUBLANDLORD within three (3) months after SUBLANDLORD's notice, then SUBTENANT's right of first refusal and provisions of this subparagraph 2(c) shall be reinstated.

3. TERM.

(a) Term. The term of this Sublease (the "Term") shall commence on the date hereof (the "Commencement Date") and shall end on the date ("Expiration Date"), which is the last day of the month in which the fifth anniversary of the Rent Commencement Date occurs,

subject to the terms of subparagraphs 3(b) below. The parties shall confirm the Expiration Date in writing once the Rent Commencement Date has occurred.

(b) Extension Option. Provided that there is no uncured Event of Default (as defined in Paragraph 16 below) hereunder on the part of the SUBTENANT, SUBTENANT may extend the Term for a period of two (2) years commencing upon the Expiration Date. In order to exercise such option, SUBTENANT shall provide written notice to SUBLANDLORD at least ninety (90) days prior to the Expiration Date of SUBTENANT's intent to extend the Term. In such event, the Term shall automatically be extended such that the Expiration Date shall then occur on the last day of the month in which the seventh anniversary of the Commencement Date occurs and all references herein to the "Term" shall be deemed to refer to the Term as extended pursuant to this Section 3(b). The terms and conditions of this Sublease shall apply during the extended Term, including without limitation the annual base rent increases set forth in subparagraph 4(a) below.

4. RENT.

(a) Base Rent.

(i) Beginning on that date which is ninety (90) days after the Commencement Date (the "Rent Commencement Date"), and thereafter on the first business day of each calendar month, SUBTENANT shall pay to SUBLANDLORD for the SUBLEASED PREMISES monthly base rent the amounts set forth on Exhibit "B" attached hereto (except that for any partial calendar month during the Term for which base rent shall be due and payable under this Sublease, the base rent shall be apportioned based on the number of days in such month). The parties agree that base rent includes payment of the utilities and ancillary rent services to be provided to SUBTENANT by SUBLANDLORD pursuant to Exhibit "F" (the "Shared Utilities and Ancillary Rent Services Exhibit"), but does not include payments for fuel oil adjustments, water and sewer, electric and snow removal adjustments, all of which shall be paid pursuant to subparagraph 4(c) below.

(ii) The annual base rent shall be increased to an amount equal to the product of (1) the annual base rent payable during the last Sublease year of the Term and (2) a fraction (A) the numerator of which is the Consumer Price Index for the calendar month in which the last day of the Sublease year of the Term falls and (B) the denominator of which is the Consumer Price Index (the "Base CPI") for the calendar month immediately preceding the first calendar month of the last Sublease year of the Term; provided, however, that in no event shall the sum, as adjusted for inflation, be less than such sum prior to being adjusted for inflation.

"Consumer Price Index" means the Consumer Price Index for All Urban Consumers published by the Bureau of labor Statistics of the United States Department of Labor, New York-Northern New Jersey-Long Island, NY-NJ-CT area, All Items (1982-1984 = 100) or any successor index thereto appropriately adjusted. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other index as SUBLANDLORD and SUBTENANT agree upon, each acting reasonably, as appropriately adjusted, shall be substituted for the Consumer Price Index. If the Consumer Price Index ceases to use 1982-1984 = 100 as the basis of calculation, the Consumer Price Index shall be adjusted accordingly.

(b) Place of Payment. All payments of base rent and other sums required to be paid to SUBLANDLORD hereunder shall be in lawful money of the United States of America and shall be paid to SUBLANDLORD at the following address: P.O. Box 905552, Charlotte, N.C. 28290-5552 or to such other person and/or at such other place as SUBLANDLORD may designate from time to time.

(c) Additional Rent. During the term hereof, SUBTENANT shall pay to SUBLANDLORD, as additional rent (together with all other amounts payable by SUBTENANT hereunder other than base rent payable under subparagraph 4(a), "Additional Rent"), Subtenant's Share of (i) electricity, (ii) water and sewer, (iii) any increases in the costs of fuel oil, and (iv) any increases in the costs of snow removal. Furthermore, SUBTENANT shall be entitled to a credit against its rent obligations in an amount equal to Subtenant's Share of any decreases in the costs of fuel oil, and (ii) any decreases in the costs of snow removal. The manner of calculating Subtenant's Share of the foregoing costs and credits is more particularly set forth in the Shared Utilities and Ancillary Rent Services Exhibit. For the purposes of this Sublease, "Subtenant's Share" shall mean (i) when determining electricity and water and sewer usage, a fraction, the numerator of which is the number of square feet of rentable area in the SUBLEASED PREMISES, and the denominator of which is the number of square feet of rentable area in Building E-336 and Building E-400 combined, calculated on a consistent basis, and (ii) when determining increases or decreases in the costs of fuel oil and snow removal, a fraction, the numerator of which is the number of square feet of rentable area in the SUBLEASED PREMISES, and the denominator of which is the number of square feet of rentable area in the Shared Site, calculated on a consistent basis.

(d) No Payment for Common Costs. Except for charges for fuel oil adjustments, water and sewer, electric and snow removal, SUBTENANT's payment of base rent shall include all amounts payable by SUBTENANT for its use of the Common Areas and the other services to be provided to SUBTENANT as described in the Shared Utilities and Ancillary Rent Services Exhibit.

(e) Government Incentive Programs. SUBLANDLORD acknowledges that SUBTENANT is eligible for, and may receive, tax abatements, tax credits, grants or other governmental or publicly-supported financial awards (collectively, "Incentive Payments") for locating SUBTENANT's business in the State of Delaware. SUBLANDLORD shall cooperate with SUBTENANT in procuring any Incentive Payments for which SUBTENANT is eligible, and to the extent that any such Incentive Payments intended for SUBTENANT are awarded to SUBLANDLORD (as, for example, an abatement of Taxes attributable to SUBLANDLORD's or any affiliate's interest the Shared Site) the entire economic benefit of such Incentive Payments shall be passed through to SUBTENANT as a reduction in base rent or in another manner mutually agreed upon by SUBLANDLORD and SUBTENANT. In the event that any such Incentive Payments are awarded to SUBLANDLORD and passed through to SUBTENANT, SUBTENANT shall have the right to inspect, upon reasonable prior notice and at reasonable times, SUBLANDLORD's books and records relating to such Incentive Payments. In no event shall SUBTENANT have any right to, or claim upon, any Incentive Payments for which SUBLANDLORD may be separately eligible, the parties hereby agreeing that this subparagraph 4(e) only applies to Incentive Payments clearly intended for SUBTENANT.

(f) Invoicing for Water and Sewer, Electric, Fuel Oil Adjustment and Snow Removal. SUBLANDLORD shall have the option of issuing invoices to SUBTENANT on a monthly or quarterly basis. Each such invoice shall set forth the amount of the total fee for fuel oil adjustments, water and sewer, electric and snow removal due for such month or quarter, as applicable. Payment terms are net 30 days of invoice receipt. SUBTENANT shall not be entitled to set off or reduce its payments to SUBLANDLORD by any amounts SUBTENANT claims are owed to it by SUBLANDLORD. The parties will implement arrangements to provide for electronic funds transfer on customary terms for such payments. Upon the termination of this Sublease, there will be a final accounting, and each party shall promptly pay to the other any amounts owed. Undisputed late payment shall bear an interest on the amount paid late at the prime rate of interest announced publicly from time to time in New York City, New York, U.S.A. by Morgan Guaranty Trust prorated for the number of days such overdue amounts are outstanding.

5. USE OF PREMISES.

(a) Permitted Uses. Subject to the further provisions of this Paragraph 5, SUBTENANT may use and occupy the SUBLEASED PREMISES for general office purposes and for drug discovery, research and development, including any ancillary uses, all of which shall be subject to the use limitations set forth on Exhibit “C” attached hereto.

(b) Access; Parking. Subject to the further provisions of this Paragraph 5, SUBLANDLORD shall provide SUBTENANT and its invitees with full and complete ingress and egress to the SUBLEASED PREMISES across SUBLANDLORD’s lands and properties on a 24 hour per day, seven day per week basis. Notwithstanding the foregoing, in the event SUBTENANT is prohibited from using its usual means of ingress and egress to the SUBLEASED PREMISES for any reason (including without limitation, maintenance being performed at the Shared Site), SUBLANDLORD may provide SUBTENANT with an alternate route of ingress and egress to the SUBLEASED PREMISES regardless of whether such route is more circuitous. SUBLANDLORD shall provide to SUBTENANT nine (9) specifically-designated Parking Spaces in close proximity to Building E-336 and two (2) specifically-designated Parking Spaces in close proximity to Building E-400, which Parking Spaces may be designated by SUBTENANT for visitors and executive-level employees of SUBTENANT for their exclusive use. SUBLANDLORD hereby represents that sufficient Parking Spaces shall be available to SUBTENANT’s other employees on the Shared Site for use by SUBTENANT’s employees on a non-exclusive basis with other employees at the Shared Site, provided, however, that such Parking Spaces may not be in the immediate proximity of the SUBLEASED PREMISES. SUBTENANT shall have the right to use all Parking Spaces provided pursuant to this subparagraph 5(b) at no additional charge.

(c) Occupancy of SUBLEASED PREMISES. SUBTENANT shall not permit the SUBLEASED PREMISES (or a portion thereof) to become or remain vacant or unoccupied for a period of time exceeding six (6) months, except as may be necessary in connection with alterations, improvements or replacements made pursuant to Paragraphs 10 or 11 hereof.

(d) Compliance With Laws. SUBTENANT shall comply at SUBTENANT’s sole cost and expense with all applicable federal, state, county and local laws, codes, ordinances

and regulations, and with the rules or regulations of any applicable Local Board of Underwriters, with respect to use and occupancy of the SUBLEASED PREMISES; provided, however, to the extent any capital improvements or replacements are required to be made to any portion of the SUBLEASED PREMISES in order to comply with any of the foregoing, SUBTENANT shall only be responsible for SUBLANDLORD approved capital improvements and replacements required by SUBTENANT's manner of use of the SUBLEASED PREMISES.

(e) Rules and Regulations. SUBTENANT shall comply with DuPont's PSGs and Security Policies and Standards (as defined in subparagraph 5(g) below), as modified from time to time, provided that (1) written notice is first given to SUBTENANT in the event of any addition or modification to the PSGs and Security Policies and Standards and (2) the PSGs and Security Policies and Standards are reasonably promulgated and uniformly applied to, and enforced against, all occupants of the Shared Site.

(f) Hazardous Substances. Any use, production, storage, deposit or disposal of Hazardous Substances (as defined in subparagraph 5(g) below) by SUBTENANT on any portion of the SUBLEASED PREMISES shall be performed or accomplished in accordance with all Environmental Laws and PSGs (as defined in subparagraph 5(g) below). Unless otherwise agreed to by SUBLANDLORD, SUBTENANT, during and upon termination of this Sublease, shall promptly remove all such Hazardous Substances used, produced, or stored on site by SUBTENANT from the SUBLEASED PREMISES in accordance with all Environmental Laws and PSGs.

(g) Environmental Matters.

(i) Certain Defined Terms. As used in this Sublease, the following terms have the following meanings (such meanings equally to be applicable to the singular as well as the plural form of the terms defined):

(1) "Chemical Substance" means an organic or inorganic substance of molecular identity, microorganisms and their DNA molecules.

(2) "DuPont's PSGs" means those SHE Policies, Standards and Guidelines and Security Policies and Standards as implemented at the Shared Site as of the date hereof and described as Exhibits "D, F, G, H, I and J" a copy of which has been provided to SUBTENANT.

(3) "Environment" means any surface water, groundwater, drinking water supply, land surface or subsurface strata, or ambient air.

(4) Environmental Claim" means any claim, action, cause of action, investigation, demand, order, directive or written notice by or on behalf of, any Governmental Authority or any other individual, corporation, limited liability company, partnership, trust or other entity, or former employee, alleging potential liability (including, without limitation, potential liability for investigatory costs, clean-up costs, governmental response costs, natural resources damages, property damages, personal injuries, medical monitoring or penalties) arising out of, based on or resulting from: (i) the presence, Release or

threatened Release of any Hazardous Substance at any location; (ii) exposure to any Hazardous Substance; or (iii) requirements or violation of any Environmental Law or Environmental Permit.

(5) “Environmental Laws” means all Laws relating to pollution or protection of human health or the Environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, the Toxic Substances Control Act, the Chemical Weapons Convention and any amendments thereto and any rules and regulations promulgated pursuant to or implementing the foregoing, similar state Laws and other Laws relating to any of (i) Releases, threatened Releases or the presence of Hazardous Substances or the manufacture, processing, distribution, use, treatment, storage, transport or handling of Hazardous Substances, including the disposal of biological, chemical, radioactive materials, (ii) noise or odors, (iii) pollution or protection of the air, surface water, groundwater, drinking water, land surface or subsurface strata, or (iv) exposure to Hazardous Substances and employee health and safety (v) use, storage, or handling of plant, animal and human pathogens.

(6) “Environmental Permit” means any permit, license, approval or other authorization under any applicable Law or of any Governmental Authority relating to Environmental Laws.

(7) “Governmental Authority” means the United States of America, the State of Delaware and any municipality or other political subdivision thereof, and any of their respective entities, bodies, agencies, commissions or courts exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any executive official thereof.

(8) “Hazardous Substance” means any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a “biohazardous”, “Biohazardous waste”, “hazardous substance”, “hazardous waste”, “oil”, “pollutant”, “toxic substance”, “hazardous material waste”, or “contaminant” or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or which is or contains any asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, explosive, nuclear, or radioactive material, or motor fuel or other petroleum hydrocarbons, or pesticides, insecticides, fungicides, or rodenticides, or biohazardous materials or waste.

(9) “Laws” means all laws, statutes, ordinances, rules, regulations, orders, writs, judgments, codes, injunctions or decrees of any Governmental Authority.

(10) “Losses” means any and all damages, losses, deficiencies, liabilities, obligations, penalties, judgments, settlements, claims, payments, fines, interest, costs and expenses (including, without limitation, the costs and expenses of any and all actions and demands, assessments, judgments, settlements and compromises relating thereto and the costs and expenses of attorneys’, accountants’, consultants’ and other professionals’ fees and expenses incurred in the investigation or defense thereof or the enforcement of rights hereunder),

but excluding consequential damages, loss of profits and punitive damages (other than such damages awarded to any third party against the party being indemnified).

(11) "Release" means any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor Environment or into or out of any property, including the movement of Hazardous Substances through or in the air, soil, surface water or groundwater.

(12) "Shared Site Biosafety Committee" means an entity of representatives of DuPont and SUBTENANT with the responsibility to conduct a Safety, Health and Environmental risk assessment review.

(ii) General.

(1) SUBTENANT acknowledges that hazards may be involved in its operations on the Shared Site. Accordingly, SUBTENANT shall perform its work in a careful and workmanlike manner and take all necessary precautions in processing, handling, transporting and disposing of material and product involved in its operations, to avoid: (w) an unhealthy or unsafe work environment; (x) injuries to persons; (y) damage to property; or (z) pollution. The methods employed and the precautions taken shall be determined by and rest solely with SUBTENANT. Any information supplied by SUBTENANT to SUBLANDLORD shall be the latest information known to SUBTENANT.

(2) SUBLANDLORD acknowledges that hazards may be involved in its operations on the Shared Site. Accordingly, SUBLANDLORD shall perform its work in a careful and workmanlike manner and take all necessary precautions in processing, handling, transporting and disposing of material and product involved in its operations, to avoid: (w) an unhealthy or unsafe work environment; (x) injuries to persons; (y) damage to property; or (z) pollution. The methods employed and the precautions taken shall be determined by and rest solely with SUBLANDLORD. Any information supplied by SUBLANDLORD to SUBTENANT shall be the latest information known to SUBLANDLORD.

(iii) DuPont's PSGs.

(1) Subject to the other provisions of this subparagraph 5(g), SUBTENANT, its invitees and contractors shall adhere to DuPont's PSGs and the Security Policies and Standards then in effect to the extent the same are applicable to SUBTENANT's operations. SUBTENANT shall advise its employees and the employees of its invitees and contractors that:

(A) It is the policy of SUBLANDLORD to prohibit the use, possession, sale, manufacture, dispensing, and distribution of drugs or other controlled substances on the Shared Site for non-prescription personal use, and to prohibit in the workplace the presence of an individual with such substances in the body for non-prescription personal use; and

(B) Any person who is found in violation of such guidelines and policies or who refuses to permit inspection may be removed or barred from the Shared Site at the sole and absolute discretion of SUBLANDLORD.

(2) SUBLANDLORD and SUBTENANT each agrees to perform its activities on or use the Shared Site in and, subject to the other provisions of this subparagraph 5(g), in compliance with DuPont's PSGs, including any updates, corrections or modifications thereto. SUBLANDLORD and SUBTENANT recognize that certain aspects of DuPont's PSGs may not be applicable to SUBTENANT's operations, and SUBTENANT shall only be obligated to adhere and comply with DuPont's PSGs to the extent applicable to SUBTENANT's operations or to the use of the Shared Site generally. SUBLANDLORD and SUBTENANT shall jointly identify the provisions of DuPont's PSGs that are applicable to SUBTENANT's operations or use of the Shared Site. SUBLANDLORD and SUBTENANT shall cooperate and assist each other in complying with all Environmental Laws and the DuPont's PSGs. DuPont's PSGs, including any updates, corrections or modifications thereto, are furnished to SUBTENANT under a nontransferable, non-exclusive and royalty-free license by SUBLANDLORD to SUBTENANT for SUBTENANT's use at the SUBLEASED PREMISES. This license is effective on the Commencement Date and shall remain in effect until this Sublease expires or sooner terminates. DuPont's PSGs, in whole or in part, are the property of SUBLANDLORD, and no title to or ownership of the DuPont's PSGs, or in any intellectual property rights relating to the DuPont's PSGs, is transferred to SUBTENANT. DuPont's PSGs contain proprietary and confidential information of SUBLANDLORD and as a condition of this license, and except as required by law or prudent business practice (e.g., bankers, attorneys, insurers), SUBTENANT agrees not to sell, sublease, or otherwise transfer, provide, disclose or make available copies of any DuPont's PSGs to any other party without the prior written consent of DuPont.

(3) SUBTENANT recognizes that DuPont's PSGs may provide only minimal guidance for SUBTENANT's compliance with Environmental Laws and therefore will not rely on them for that purpose.

(4) In order to protect its employees, contractors, visitors and premises, SUBLANDLORD has determined that there are certain minimally acceptable elements that must be present in SUBTENANT's policies, practices, and operations at the SUBLEASED PREMISES. The sole purpose of SUBLANDLORD communicating such elements in the DuPont's PSGs and Security Policies and Standards is for the protection of DuPont's employees, contractors, visitors, and premises and neighbors. There is no intention to communicate to SUBTENANT a comprehensive safety, health, and environmental program which will meet its particular needs with respect to its employees, contractors, visitors, and premises and neighbors. It is understood that it remains the ultimate responsibility of SUBTENANT to evaluate its needs/risks and to develop those programs and procedures it deems necessary to manage those needs/risks. Notwithstanding the foregoing, SUBLANDLORD retains the right in its absolute discretion, upon reasonable prior notice and at SUBLANDLORD's sole expense to enter at all reasonable times to audit SUBTENANT's compliance with DuPont's PSGs and/or Security Policies and Standards and SUBTENANT agrees to cooperate in a reasonable manner with such audit; provided, however, that any such audit shall occur no more frequently than once every month unless SUBLANDLORD has

reasonable grounds to perform an audit more frequently and identifies such grounds in a written notice to SUBTENANT. SUBLANDLORD shall promptly provide SUBTENANT with the findings of the audit and shall not disclose the findings to third parties, except as may be required by Environmental Laws and only after notice to SUBTENANT (and, if permitted by the applicable Environmental Laws, shall allow SUBTENANT to make such disclosure provided SUBTENANT does so within five business days of receiving notice of the need therefor from SUBLANDLORD). SUBLANDLORD shall promptly provide SUBTENANT with the findings of the audit and SUBTENANT shall immediately correct any deficiencies identified in the audit findings.

(iv) Chemical Substances. Within sixty (60) days after the Commencement Date and as amended on a timely basis, SUBTENANT shall provide SUBLANDLORD a list by chemical name, Chemical Abstract Service Number, by trade name and quantity of all Chemical Substances, biological materials and Hazardous Substances which it intends to make, process, use or store at the SUBLEASED PREMISES so that SUBLANDLORD may use such information to comply with Environmental Laws. SUBLANDLORD shall keep all information furnished by SUBTENANT, including but not limited to any information pertaining to Chemical Substances, biological materials and Hazardous Substances that SUBTENANT designates as information which SUBTENANT is creating or developing or any other information which is otherwise of a proprietary or confidential nature (the "SUBTENANT Proprietary Information"), confidential and shall not use such information for any purpose other than complying with such legal obligations. SUBLANDLORD further agrees that SUBTENANT may avail itself, and SUBLANDLORD shall avail itself on SUBTENANT's behalf, of any confidential business information (CBI) procedures available under any applicable Laws with respect to any information disclosed by or obtained from SUBTENANT.

(v) Permits. SUBTENANT will obtain SUBLANDLORD's prior approval for any permits SUBTENANT may need to obtain so that such permits do not conflict with or impose additional regulatory burden on SUBLANDLORD's operations at the Shared Site. SUBLANDLORD will provide support with respect to its Title V Air Permit in accordance with Exhibit J, and SUBTENANT shall comply with, the relevant provisions of the Shared Utilities and Ancillary Rent Services Exhibit. SUBTENANT agrees to notify and receive approval from DuPont prior to obtaining federal, state, and/or local Safety, Health and Environmental permits. SUBTENANT will provide information regarding the permits as requested by the SUBLANDLORD to the extent necessary to enable SUBLANDLORD to comply with any Environmental Law and its Title V Air Permit obligations (including SUBTENANT Proprietary Information). SUBLANDLORD shall keep all such information (including but not limited to SUBTENANT Proprietary Information) confidential and shall not use such information for any purpose other than complying with such legal obligations. SUBLANDLORD further agrees that SUBTENANT may avail itself, and SUBLANDLORD shall avail itself on SUBTENANT's behalf, of any confidential business information (CBI) procedures available under any applicable Laws with respect to any information disclosed by or obtained from SUBTENANT.

(vi) Wastes. Unless as otherwise agreed and except as to SUBLANDLORD's Environmental Liabilities (as defined below), SUBTENANT shall retain

sole and complete responsibility for the management, storage and proper disposal of chemical substances, wastes, discharges and emissions in all media produced from its activities. SUBTENANT shall provide SUBLANDLORD an updated list of the identity of any waste disposal subcontractor, methods of waste disposal to be used, and the locations of sites to be used for waste disposal not covered by the Shared Utilities and Ancillary Rent Services Exhibit. SUBTENANT shall transport and dispose of such waste in a safe and environmentally sound manner to prevent any waste from entering the environment as a pollutant. SUBTENANT agrees that it will not engage in and will not knowingly permit any other party to engage in any activity without prior approval from SUBLANDLORD with respect to the SUBLEASED PREMISES that would reasonably be expected to cause the SUBLEASED PREMISES or the adjoining property of SUBLANDLORD to become a hazardous waste treatment, storage or disposal facility within the meaning of RCRA.

(vii) MSDS. SUBTENANT shall submit Material Safety Data Sheets complying with the Federal Hazard Communication Standard (OSHA 1910.1200) together with its submission of the lists of Chemical Substances and Hazardous Substances required by subparagraph 5(g)(iv) above. Such Chemical Substances and Hazardous Substances shall be properly labeled and strictly controlled by SUBTENANT as to their use and disposal.

(viii) Notice. Each party hereto shall notify the other party of any incidents or conditions that may have adverse safety, health or environmental consequences to employees, contractors, visitors or property or neighbors. While SUBLANDLORD or SUBTENANT may discover and/or disclose issues regarding the other party's compliance with Environmental Laws and make recommendations to that party to avoid noncompliance with Environmental Laws, neither party hereto makes a representation or warranty that all possible compliance issues have been identified and disclosed or that its disclosures or recommendations include all possible recommendations to prevent the occurrence of noncompliance with Environmental Laws. Neither party shall disclose information relating to the other party's compliance with Environmental Laws to third parties, except as required by Environmental Laws and only after notice to the other party (and, if permitted by the applicable, Environmental Laws, such party will allow the non-complying party to make such disclosure provided the non-complying party does so within five business days of receiving notice of the need therefor from the other party). Neither party hereto certifies the other party's or any third party's compliance with present or future Environmental Laws, and each party agree to seek its own legal advice regarding its own compliance unless otherwise required. Notwithstanding the above, SUBTENANT will certify compliance with the Title V Air Permit described in exhibit "J" to the extent that such certifications relate solely to SUBTENANT's operations.

(ix) Compliance.

(1) SUBLANDLORD shall grant or withhold its consent to SUBTENANT activities involving the use of Center for Disease Control, Animals Plants Health Inspection Services, United States Department of Agriculture Select Agents or Toxins and/or the equivalent Delaware Department of Public Health biological agents, or biological agents or recombinant DNA-biological agents with a biohazards risk assessment of Biosafety Level –3 in accordance with this paragraph. First, SUBTENANT shall, at least 90 days prior to its intended acquisition of any such Agents, Toxins or biological agents and/or its

intended initiation of R&D protocols in connection therewith, register with the Shared Site Biosafety Committee, and submit a Safety, Health and Environmental risk assessment for SUBTENANT. Second, for those biological materials listed as Select Agents or Toxins by the federal Department of Health and Human Services or those set forth on the equivalent list of agents maintained by the Delaware Department of Public Health, and in each case their subsequent updates, at the same time SUBTENANT submits the risk assessment to the Shared Site Biosafety Committee (or before making such submission if SUBTENANT so elects), SUBTENANT shall request SUBLANDLORD's approval to use the particular biological materials, and SUBLANDLORD shall have the right to grant or withhold approval in its sole discretion. SUBTENANT will not make an acquisition or initiate an R&D protocol until the acquisition or protocol is reviewed and approved by the Shared Site Biosafety Committee and, if applicable, by SUBLANDLORD.

(2) At the commencement of this Sublease, the SUBTENANT will provide SUBLANDLORD with the name of the SUBTENANTS' Biosafety Officer. The SUBTENANT's Biosafety Officer will participate as a member of the Shared Site Biosafety Committee.

(3) Each party shall be responsible for complying with Environmental Laws relating to the operation of its activities at the Shared Site and with respect to the provision and receipt of shared services under the Shared Utilities and Ancillary Rent Services Exhibit. Notwithstanding the above, SUBLANDLORD or SUBTENANT may contract out the record keeping and/or reporting activities required by any Environmental Laws, provided that such party shall not contract away its liability and responsibility for assuring that any required records or reports comply with the legal requirements and are truthful and accurate.

(4) Notwithstanding the foregoing, complaints from the community regarding odors or excessive emissions shall be handled through SUBLANDLORD procedures and communicated promptly to each party's site representative.

(x) Indemnity.

(1) SUBLANDLORD agrees to indemnify, release, defend and hold harmless SUBTENANT from and against all Environmental Claim(s) and/or Losses which arise, or are alleged to arise, from or in connection with:

(A) Any non-compliance with any Environmental Law or Environmental Permits at the Shared Site (whether on or off the Shared Site) occurring prior to the date hereof and any such non-compliance caused by SUBLANDLORD after the date hereof;

(B) The generation, manufacture, refining, transportation, treatment, storage, handling, disposal, discharge, Release or spill of any Hazardous Substance at the Shared Site (whether on or off the Shared Site) occurring prior to the date hereof and any such generation, manufacture, refining, transportation, treatment, storage, handling, disposal, discharge, Release or spill of any Hazardous Substance caused by SUBLANDLORD after the date hereof;

(C) Any disturbance, migration, leaching or Release of any Hazardous Substance onto, off of, near, under, or otherwise affecting the Shared Site occurring prior to the date hereof and any such disturbance, migration, leaching or Release of any Hazardous Substance continuing or caused by SUBLANDLORD after the date hereof; or

(D) Any quantity of a Hazardous Substance which was at the Shared Site and disposed of off the Shared Site in any such case, prior to the date hereof, or disposed of or caused by SUBLANDLORD after the date hereof.

Notwithstanding the foregoing clauses (a) through (d) above, (collectively, SUBLANDLORD's "Environmental Indemnities"), SUBLANDLORD's indemnity does not extend to Environmental Claims or Losses directly resulting from soil excavation, characterization or disposal by/for SUBTENANT after the date hereof (as for example and not a limitation, excavation, characterization or disposal undertaken during construction or facility modification as permitted pursuant to the terms hereof) and such Environmental Claims or Losses shall be borne by SUBTENANT to the extent of SUBTENANT's excavation, characterization or disposal.

(2) SUBTENANT agrees to indemnify, release, defend and hold harmless SUBLANDLORD from and against all Environmental Claims or Losses which arise, or are alleged to arise, from or in connection with:

(A) SUBTENANT's release of a Hazardous Substance in violation of any Environmental Law at the Shared Site (whether on or off the Shared Site) occurring on or after the Commencement Date;

(B) SUBTENANT's violation of any Environmental Law including permitting conditions at the Shared Site (whether on or off the Shared Site) occurring on or after the Commencement Date;

(C) The generation, manufacture, refining, transportation, treatment, storage, handling, disposal, discharge, Release or spill of any Hazardous Substance at the Shared Site by SUBTENANT or its contractors or subcontractors; and

(D) Any disturbance, migration, leaching or Release of any Hazardous Substances on, onto, near, under or otherwise affecting the Shared Site (including, without limitation, the SUBLEASED PREMISES), provided that the origin, disturbance, migration, leaching or release of the Hazardous Substance was due to the actions or operations of SUBTENANT or its contractors or subcontractors.

(3) Where SUBLANDLORD and SUBTENANT have jointly caused any Environmental Claims or Losses, whether or not a third party's acts or omissions also were causal, SUBTENANT and SUBLANDLORD shall contribute to their common liability a pro rata share based upon the relative degree of fault of each (including attorneys' fees and other costs of defense). Each party hereto shall bear its own attorneys' fees and costs of defense, subject to reimbursement by the other party, until:

(A) There is a final court judgment allocating fault between the SUBLANDLORD and SUBTENANT; or

(B) SUBLANDLORD and SUBTENANT otherwise agree to an allocation.

Upon the occurrence of an event described in clauses (A) or (B) above, SUBTENANT shall reimburse SUBLANDLORD for that portion of the past costs, attorneys' fees and defense costs incurred by SUBLANDLORD which is equal to SUBTENANT's share of the allocation, or SUBLANDLORD shall reimburse SUBTENANT for that portion of the past costs, attorneys' fees and defense costs paid by SUBTENANT which is equal to SUBLANDLORD's share of the allocation, whichever is applicable. Thereafter, SUBLANDLORD and SUBTENANT shall share the costs according to the allocation.

(4) In the event of any Environmental Claims and/or Losses for which a party hereto is entitled to indemnity hereunder, the party seeking indemnity shall immediately notify in writing the indemnifying party of such matter, shall fully cooperate with the indemnifying party in the defense of the, Environmental Claims and/or Losses and, at the indemnifying party's cost, permit the indemnifying party's attorneys to handle and control the conduct and/or settlement of such Environmental Claims and/or Losses, including making personnel and records available for the defense. In no event shall the indemnifying party agree to a settlement that contains a non-monetary component without the consent of the indemnified party, which consent not to be unreasonably withheld or delayed. The above indemnification provision is contingent upon the indemnified party promptly turning over the complete control of the Environmental Claims and/or Losses to the indemnifying party.

(xi) Limitation. The foregoing indemnities are subject to the provisions of subparagraph 15(c). Furthermore, nothing contained herein shall prohibit either party hereto from seeking restitution or contribution from third parties.

(xii) Survival. The provisions of this subparagraph 5(g) shall expressly survive the expiration or earlier termination of this Sublease.

(h) Criminal Background Checks. Prior to hiring or assigning any employee to perform work at the SUBLEASED PREMISES, SUBTENANT shall have performed a criminal background check to determine whether such employee has been convicted of any felony crimes, felony crimes plea bargained to a lesser charge, or previous misdemeanor crime. SUBTENANT shall not, without SUBLANDLORD's prior written approval, permit an employee to work at the SUBLEASED PREMISES if that employee has within the prior seven year period been convicted of any felony crimes, felony crimes plea bargained to a lesser charge, or previous misdemeanor crime. Any contractor who is assigned (working) on the Shared Site for three days or less can be escorted 100% of the time in lieu of the criminal background check. Any assignment of a contractor that is longer than three days (cumulative) must have a criminal background check conducted in accordance with the first two sentences of this subparagraph. All other contractors entering the Shared Site must provide 2 forms of photo identification to SUBLANDLORD. Additionally, SUBTENANT shall obtain a criminal background check for any contractor who both frequently makes scheduled (or routine) deliveries to the Shared Site

and who obtains a “contractor” license at the Shared Site. SUBTENANT’s criminal background check program must be in compliance with the Fair Credit Reporting Act, a copy of which has been provided to SUBTENANT. Further, SUBTENANT shall notify SUBLANDLORD’s Security Manager U.S. Region at the following address:

E. I. DU PONT DE NEMOURS AND COMPANY
1007 Market Street Room NG1
Wilmington, Delaware 19898
Attention Security Manager U.S. Region

6. UTILITIES AND SERVICES.

(a) General. SUBLANDLORD shall furnish the SUBLEASED PREMISES with those utilities and services necessary to use the SUBLEASED PREMISES for the purposes described in subparagraph 5(a) above, including without limitation those identified on the Shared Utilities and Ancillary Rent Services Exhibit. SUBLANDLORD and SUBTENANT hereby agree that the Shared Utilities and Ancillary Rent Services Exhibit shall govern the provision of such services in connection with the SUBTENANT’s use of the SUBLEASED PREMISES. SUBLANDLORD shall provide shared utilities and ancillary rent services to SUBTENANT using the same degree of care as it exercises in providing such utilities and services for its own use, and nothing in this Sublease shall imply or require that SUBLANDLORD shall meet a higher standard of care which might be applicable to commercial providers of such services. Nothing in this Sublease shall require SUBLANDLORD to favor SUBTENANT over the businesses of SUBLANDLORD, nor shall SUBLANDLORD favor its business over the SUBTENANT’s business in providing such utilities and services. Should SUBTENANT’s use of shared utilities or services require SUBLANDLORD to expand, modify or modernize its equipment or distribution lines to provide such utilities or services, and SUBTENANT requests that SUBLANDLORD proceed with such expansion, modification or modernization after written notice from SUBLANDLORD of the need therefor, the cost of such work shall be for SUBTENANT’s account, unless agreed otherwise. Should SUBLANDLORD, in it’s sole discretion, expand, modify, or modernize its equipment or distribution lines to provide such utilities or services, the cost thereof shall be apportioned fairly between SUBLANDLORD, SUBTENANT and any other occupants at the Shared Site. All utilities and services shall be provided by employees of SUBLANDLORD or its affiliates, or at SUBLANDLORD’s election, by third parties to whom it has contracted. All references in this Sublease to SUBLANDLORD providing a utilities or services shall include both provision by the SUBLANDLORD and indirect provision by third parties. SUBTENANT agrees that the utilities or services provided by third parties are conditioned upon performance by such third parties under their separate agreements between SUBLANDLORD and such third parties. SUBLANDLORD reserves the right to purchase any utilities or services from a third party or to change a third party provider. In no event shall SUBTENANT be entitled to re-sell or supply any utilities or ancillary rent service to a third party. SUBLANDLORD shall not be required to provide SUBTENANT extraordinary levels of service that are above the ordinary levels, special studies, training, or the like.

(b) Temporary Shutdown. SUBLANDLORD, at its sole and absolute discretion, shall have the right to temporarily shut down and/or suspend any utility or ancillary rent service, in whole or in part, at any time, but solely to the extent necessary to address a

material threat to safety, health or the environment. In this regard, SUBLANDLORD will use good faith efforts and reasonable diligence to address such safety, health or environmental matters, and SUBTENANT shall fully cooperate with SUBLANDLORD. SUBLANDLORD shall use good faith efforts and reasonable diligence to expeditiously resume the supply of the affected utility or ancillary rent service after, in the sole and absolute judgment of SUBLANDLORD, such concern is abated. Further, in the event of a temporary partial loss of a utility or ancillary rent service due to equipment failure or Force Majeure causes, SUBLANDLORD will fairly allocate such portions of the affected utilities or ancillary rent services between SUBLANDLORD's operations, SUBTENANT and other tenants of the Shared Site. If any utility or service is not fully restored within fifteen (15) days of the shut down or suspension thereof, and if such shut down or suspension materially interferes with SUBTENANT's use and enjoyment of the SUBLEASED PREMISES, SUBLANDLORD shall proportionately reduce the rent due hereunder during the period of material interference.

(c) SUBLANDLORD Not a Public Utility. It is understood that neither party hereto considers SUBLANDLORD to be a regulated public utility. Furthermore, neither party intends by this Sublease to engage in the business of being a public utility or to enjoy any of the powers and privileges of a public utility or by its performance of its obligations to dedicate to public or quasi-public use or purpose any of the facilities which it operates, and each party agrees that the execution of this Sublease shall not, nor shall any performance or partial performance, be or ever be deemed, asserted or urged by a party to be a dedicated public or quasi-public use of any such facilities of the other party, or as subjecting the other party to any jurisdiction or regulation as a public utility. Notwithstanding the foregoing, should SUBLANDLORD be determined to be a public utility or should SUBLANDLORD determine in good faith based on the advice of counsel that there is a material risk of it being deemed to be a public utility SUBLANDLORD may terminate the affected utility or service(s) upon not less than ninety (90) days' written notice to SUBTENANT. Notwithstanding the foregoing, in the event SUBLANDLORD receives an order from any governmental authority requiring SUBLANDLORD to cease providing a service in less than ninety (90) days and SUBLANDLORD is unable to timely obtain a stay of enforcement of that order after exercising its good faith efforts to do so, SUBLANDLORD shall immediately notify SUBTENANT of such occurrence and may terminate such utility or ancillary rent service consistent with the time period set forth in that order. Upon request by SUBTENANT and at SUBTENANT's expense, SUBLANDLORD must appeal such order and/or seek a stay of enforcement, so SUBLANDLORD can continue providing such utility or ancillary rent service pending appeal of that order. If any utility or service is not fully restored within fifteen (15) days SUBLANDLORD ceases to provide it, and if such cessation of a utility or service materially interferes with SUBTENANT's use and enjoyment of the SUBLEASED PREMISES, SUBLANDLORD shall proportionately reduce the rent due hereunder during the period of material interference.

(d) No Representations. SUBLANDLORD MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY ARISING FROM OPERATION OF LAW OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY UTILITY OR SERVICE PROVIDED HEREUNDER, THE QUALITY OR CONDITION

THEREOF, OR ANY OTHER MATTER. SUBTENANT ASSUMES ALL RISK AND LIABILITY RESULTING FROM ITS RECEIPT AND/OR USE OF A UTILITY OR SERVICE.

(e) Telecommunications Infrastructure. SUBLANDLORD is not providing any telecommunications services to SUBTENANT. SUBTENANT, together with any third party provider, shall be solely responsible for the design and functionality of any telecommunications system installed in the SUBLEASED PREMISES. Any new telecommunications system installed by SUBTENANT must use no less than Category 5E fire retardant wiring.

(f) Non-Standard Services. In the event that SUBTENANT requests SUBLANDLORD to provide any non-standard service, or any service not contemplated by Exhibit "F," SUBLANDLORD shall have the option of providing such service, but shall have no obligation to do so. If SUBLANDLORD elects to provide the service, it will be provided on terms and conditions agreed upon by the parties, including without limitation the costs thereof.

7. SIGNS. SUBTENANT shall be permitted to install its logo and/or business name (a) on the existing sign at the main gate for the Shared Site, (b) on the existing monument signs at the entrances to Building E-336 and Building E-400, and (c) on the glass entry doors to each building, provided that in each case the logo and/or business name shall be affixed in a manner and be of such size, design and color as shall be (i) consistent with the lettering, design, etc. utilized by SUBLANDLORD on such existing signs and on other building entry doors on the Shared Site, (ii) compliant in all respects with local zoning and/or other municipal ordinances; and (iii) approved in advance in writing by SUBLANDLORD, which approval shall not be unreasonably withheld, conditioned or delayed. SUBTENANT, at its sole cost and expense, shall remove such logo and/or business name upon the termination of this Sublease. Any defacement or damage to the Building or the SUBLEASED PREMISES caused by logo and/or business name or the installation or removal thereof shall be repaired promptly by SUBTENANT. SUBTENANT shall not have the right to install any signs on the exterior of Building E-336 and Building E-400.

8. ASSIGNMENT AND SUBLETTING. SUBTENANT shall not assign, convey, sublet, mortgage, encumber or otherwise transfer (all of the foregoing a "Transfer") all or any portion of its rights and obligations under this Sublease, including without limitation a Transfer to an Affiliate, without the prior written consent of the SUBLANDLORD, which consent shall be in SUBLANDLORD's sole discretion. For purposes of this Paragraph 8, the term "Affiliate" means any entity who, directly or indirectly, controls or is controlled by or is under common control with SUBTENANT, whether through the ownership of voting securities or by contract or otherwise. If there is a change of control of SUBTENANT (as defined below), SUBTENANT will so notify SUBLANDLORD. Following a change of control of SUBTENANT and provided that at least twenty-one (21) months remain under the unexpired Term (including any extension option), SUBLANDLORD may, in its sole discretion, terminate this Sublease upon at least twenty-one (21) months' prior written notice to the other party. For purposes of this section, a "change of control of SUBTENANT" has occurred if (i) any person or group becomes the owner of more than 50% of the voting stock in SUBTENANT, (ii) SUBTENANT sells or leases all or substantially all of its assets relating to its drug discovery operations, or (iii) SUBTENANT

merges, consolidates or otherwise combines with another entity and SUBTENANT's stockholders fail to own at least 50% of the surviving entity. In the event of any permitted Transfer, SUBTENANT shall nonetheless remain liable for the performance of all of the obligations of the SUBTENANT hereunder.

9. CONDITION OF PREMISES.

(a) Representations. To induce SUBTENANT to enter this Sublease and take possession of the SUBLEASED PREMISES, SUBLANDLORD hereby represents and warrants to SUBTENANT as follows:

(i) The SUBLEASED PREMISES and the operation thereof complies in all material respects with all applicable federal, state and local laws, regulations, codes, orders, ordinances, rules and statutes and any restrictive covenants applicable to the SUBLEASED PREMISES. SUBLANDLORD has obtained all permits, approvals and licenses necessary for the Shared Site and the use thereof. The purposes for which the SUBLEASED PREMISES may be used pursuant to subparagraph 5(a) are permitted within the zoning classification of the Shared Site or appropriate zoning relief from such classification has been obtained and is in effect.

(ii) The improvements and Fixtures included in the SUBLEASED PREMISES have been kept and maintained in good working order and condition and will be in such condition as of the Commencement Date.

(iii) Each portion of space comprising the SUBLEASED PREMISES (A) has been completely decommissioned in accordance with all applicable Laws, including Environmental Laws, and in accordance with DuPont's PSGs, (B) has been decontaminated in accordance with the procedures set forth on Exhibit "G," and (C) to SUBLANDLORD's knowledge, does not contain any lead-based paint, asbestos or asbestos containing materials, polychlorinated biphenyls or urea formaldehyde foam insulation.

(b) No Alterations. SUBTENANT acknowledges that SUBLANDLORD has no obligation to alter, remodel or improve the SUBLEASED PREMISES and that SUBLANDLORD's obligations are limited to delivering the SUBLEASED PREMISES to SUBTENANT in the condition specified in subparagraph (a) above.

(c) Joint Inspection. At the time of occupancy, SUBTENANT shall inspect and execute the "Chemical Laboratory Final Check List," a copy of which has been provided to SUBTENANT, to acknowledge the condition of laboratory space.

10. ALTERATIONS.

(a) General Provisions. SUBTENANT shall have no right to make any alterations, installations, changes and improvements whatsoever in and upon the SUBLEASED PREMISES without the prior written consent of SUBLANDLORD, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that SUBTENANT shall have the right to make those initial alterations for SUBTENANT's occupancy which are more particularly identified on Exhibit "E" attached hereto and made a part hereof. In this regard, the

Parties shall meet to review the proposed alteration and, if SUBLANDLORD agrees that SUBTENANT may make the alteration, the Parties shall establish and implement a coordinated management process under which SUBTENANT's procurement and installation of goods or services necessary for the alteration will be overseen by SUBLANDLORD and SUBTENANT to assure compliance with applicable PSGs and site safety and security requirements. SUBTENANT shall bear all costs for such alterations and shall pay SUBLANDLORD a negotiated fee to cover SUBLANDLORD costs for administrative oversight.

(b) Rights of Removal. Upon termination or expiration of this Sublease or at any time during the continuance hereof (but provided that no Event of Default shall have occurred and be continuing hereunder), (i) SUBTENANT shall have the right to remove from the SUBLEASED PREMISES any articles of personal property or trade fixtures made or installed by SUBTENANT (which does not include any hoods, duct work, stacks, blowers, casework and any other generic laboratory equipment that are existing on the date hereof which may be deemed to be trade fixtures (collectively, "Excluded Trade Fixtures"), and (ii) except as otherwise agreed in writing by the parties, SUBTENANT shall have the right to remove from the SUBLEASED PREMISES any alterations, installations, changes, improvements or other property, including fixtures (other than Excluded Trade Fixtures), made or installed by SUBTENANT whether or not constituting or becoming a part of the SUBLEASED PREMISES and whether made or installed under subparagraph 10(a) or otherwise; provided that, in the case of both clause (i) and clause (ii) above, any damage caused by such removal will be fully repaired by SUBTENANT at SUBTENANT's sole cost and expense prior to surrender of the SUBLEASED PREMISES.

(c) Obligation to Remove. Upon termination or expiration of this Sublease, (i) SUBLANDLORD shall have the right to require SUBTENANT to remove from the SUBLEASED PREMISES all articles of SUBTENANT's property, whether fixtures or personalty, other than any alterations, installations, changes or improvements made by SUBTENANT to the SUBLEASED PREMISES in accordance with the provisions of subparagraph 10(a) hereof, whether or not the same have become an actual part thereof, and any damage caused by any such removal will be fully repaired by SUBTENANT at SUBTENANT's sole cost and expense prior to the surrender of the SUBLEASED PREMISES, and (ii) in the event SUBTENANT fails to remove any property from the SUBLEASED PREMISES as and when required by SUBLANDLORD in accordance with clause (i) of this subparagraph 10(c), SUBLANDLORD shall have the right to (x) remove, transport and dispose of same (without taking title or ownership thereto); and (y) fully repair any damage caused by such removal, and SUBTENANT shall indemnify and hold harmless SUBLANDLORD for any costs, expenses or liabilities whatsoever associated with such removal, transportation and disposal and any such repair (other than to the extent any such costs, expenses or liabilities arise from the gross negligence, recklessness or willful misconduct of SUBLANDLORD in performing such activities).

(d) Abandonment. Any alterations, installations, changes, improvements or other property which SUBTENANT has placed on the SUBLEASED PREMISES and which is not removed within sixty (60) days following the termination or expiration of this Sublease shall be deemed to have been abandoned by SUBTENANT and shall become the property of SUBLANDLORD upon the termination or expiration of this Sublease, subject to

SUBLANDLORD's rights to remove, transport and dispose of same (without taking title or ownership thereto) at SUBTENANT's sole cost and expense as set forth in subparagraph 10(c) hereof.

(e) Compliance with Laws. Any alterations, additions or improvements made by SUBTENANT shall be made in accordance with applicable federal, state, county and local laws and ordinances and building codes, rules and regulations.

11. MAINTENANCE AND REPAIRS.

(a) SUBTENANT's Responsibilities. SUBTENANT, at its own cost and expense, shall keep the interior of the SUBLEASED PREMISES and all improvements made by SUBTENANT in good order and shall be responsible for the full cost of the repair to any such item, unless it is a repair for which SUBLANDLORD is responsible under subparagraph 11(b) below.

(b) SUBLANDLORD's Responsibilities. SUBLANDLORD shall keep in good order, condition and repair and replace when necessary the structural portions of each building included in the SUBLEASED PREMISES, the roof and roof membrane, foundations, appurtenances, heating, ventilation and air conditioning equipment, electrical systems, plumbing systems, lighting, storm drainage and other mechanical systems of the Building, exterior walls and windows of the Building and utility and sewer pipes serving the Building. SUBLANDLORD shall also perform all routine maintenance required at each building included in the SUBLEASED PREMISES, including without limitation painting, repairing broken glass and ordinary maintenance of all such building components. SUBLANDLORD shall also be responsible for repairing any damage to the SUBLEASED PREMISES caused by leaks in the roof, bursting pipes (by freezing or otherwise) or by defects in any building. SUBLANDLORD shall keep all roads and sidewalks on the Shared Site in a neat and clean condition and promptly remove all dirt, trash, snow and ice therefrom.

If SUBLANDLORD fails to make any repairs required by this Sublease within fifteen (15) days of SUBLANDLORD's receipt of written notice from SUBTENANT of need therefor (except in the event of an emergency in which case SUBTENANT shall only have to wait a period of time that is reasonable under the circumstances), and if such failure materially interferes with SUBTENANT's use and enjoyment of the SUBLEASED PREMISES, SUBTENANT may make such repairs and offset the cost thereof against base rent and other amounts due under this Sublease and may recover the amount thereof from SUBLANDLORD in addition to any other legal or equitable remedies SUBTENANT may have. Notwithstanding the foregoing, if SUBLANDLORD shall have commenced to make such repairs within such fifteen (15) day period (or shorter period in the event of an emergency) and shall be diligently pursuing the completion thereof, SUBTENANT shall not have the right to make such repairs and recover the cost of doing so from SUBLANDLORD unless SUBLANDLORD ceases to diligently pursue the completion thereof.

12. LIABILITY. SUBLANDLORD in no event shall be liable for any damage or injury to SUBTENANT or any agent, employee or invitee of SUBTENANT, or to any person or persons coming upon the SUBLEASED PREMISES in connection with the occupancy by

SUBTENANT or otherwise, or to any goods, chattels, or other property of SUBTENANT or any other person or persons which may during the term of this Sublease be located in the SUBLEASED PREMISES, which damage or injury has been caused or contributed to by water, rain, snow, breakage of pipes, leakage, casualty (including, without limitation, any damage resulting from a casualty of the nature insured against under a comprehensive policy of property insurance with extended coverage riders) or by any other cause beyond SUBLANDLORD's control, except when caused by the gross negligence, recklessness or willful misconduct of SUBLANDLORD, its invitees, agents or employees. Nothing in this Paragraph 12 is intended to limit or otherwise affect SUBLANDLORD's indemnity obligations to SUBTENANT relating to environmental matters as provided in subparagraph 5(g) of this Sublease.

13. ACCESS TO SUBLEASED PREMISES. SUBTENANT shall permit SUBLANDLORD to enter upon the SUBLEASED PREMISES at all times in an emergency and otherwise at all reasonable times upon reasonable notice (which shall mean at least 48 hours prior notice) for the purpose of inspecting the same and/or providing services pursuant to Paragraph 6 and the Shared Utilities and Ancillary Rent Services Exhibit and/or maintenance or making repairs or replacements pursuant to subparagraph 11(b) hereof and/or making any repairs or rebuilding under Paragraph 14 hereof.

14. CASUALTY.

(a) Non-Material Casualty. In the event that fire or other casualty damages the SUBLEASED PREMISES to an extent that does not materially interfere with SUBTENANT's use thereof as permitted under subparagraph 5(a) hereof, SUBLANDLORD shall repair the SUBLEASED PREMISES promptly after such casualty at its sole cost and expense.

(b) Material Casualty. In the event that fire or other casualty damages the SUBLEASED PREMISES to an extent that materially interferes with SUBTENANT's use thereof as permitted under subparagraph 5(a) hereof, SUBLANDLORD shall proportionately reduce the rent due hereunder during the period of material interference, and SUBLANDLORD shall have the option, in its sole discretion, of rebuilding or repairing the SUBLEASED PREMISES at its sole cost and expense; provided, however, that SUBLANDLORD shall rebuild or repair the SUBLEASED PREMISES if such rebuilding or repairs are reasonably estimated as being capable of rebuilding or repair for less than $100,000.00. If SUBLANDLORD is not required and elects not to rebuild or repair the SUBLEASED PREMISES and continued occupancy thereof is otherwise lawful, SUBLANDLORD shall so inform SUBTENANT and SUBTENANT may (i) vacate the part of the SUBLEASED PREMISES rendered unusable by the fire or other casualty and continue to occupy the remainder of the SUBLEASED PREMISES and to pay the proportionately reduced rent, or (ii) promptly quit the SUBLEASED PREMISES by notifying SUBLANDLORD in writing of SUBTENANT's election to terminate this Sublease and thereafter this Sublease shall terminate as of the effective date of such notice and SUBTENANT shall be entitled to a refund for any unearned rent paid or credited in advance to SUBLANDLORD. If SUBLANDLORD elects not to rebuild the SUBLEASED PREMISES and continued occupancy thereof is unlawful, SUBLANDLORD shall so inform SUBTENANT, and SUBTENANT shall promptly quit the SUBLEASED PREMISES at which time this Sublease shall terminate and SUBTENANT shall be entitled to a refund for any unearned rent paid or

credited in advance to SUBLANDLORD. If SUBLANDLORD is not required but does elect to rebuild or repair, SUBLANDLORD shall notify SUBTENANT within thirty (30) days of learning of the casualty of its intention to rebuild or repair, which notice shall provide SUBTENANT with SUBLANDLORD's good faith estimate of the time needed to complete the rebuilding or repairing, and this Sublease shall remain in full force and effect (with the rent proportionately reduced until such rebuilding or repairing is complete); provided, however, that in the event that (i) SUBLANDLORD's reasonable estimate indicates that rebuilding or repairing would take longer than six (6) months, or (ii) rebuilding or repairing in fact takes longer than six (6) months, SUBTENANT may thereupon quit the SUBLEASED PREMISES and within five (5) days after vacating the SUBLEASED PREMISES notify SUBLANDLORD in writing of SUBTENANT's election to terminate this Sublease, in which case this Sublease shall terminate as of the date of SUBLANDLORD's receipt of such notice and SUBTENANT shall be entitled to a refund for any unearned rent paid or credited in advance to SUBLANDLORD. If SUBTENANT fails to notify SUBLANDLORD of SUBTENANT's election to quit the SUBLEASED PREMISES in accordance with this Paragraph 14, SUBTENANT shall be liable for rent accruing to the date of SUBLANDLORD's actual knowledge of SUBTENANT's vacation or impossibility of further occupancy. Notwithstanding any other provision to the contrary, SUBLANDLORD shall have the right to retain any and all insurance proceeds regardless of its decision regarding rebuilding or repairing the SUBLEASED PREMISES.

(c) SUBTENANT shall bear the risk of loss for all its personal property (and all personal property of its employees and invitees) including improvements and fixtures within the SUBLEASED PREMISES.

15. ADDITIONAL INDEMNITY.

(a) SUBTENANT Indemnity. Except as otherwise herein provided (including, without limitation, as provided in subparagraph 5(g) hereof), SUBTENANT, promptly following demand by SUBLANDLORD, shall indemnify and hold SUBLANDLORD safe and harmless from and against any and all Losses (i) on account of the death of or injury to any person or persons or the damage to or destruction of any property arising from or growing out of SUBTENANT's use and occupancy of the SUBLEASED PREMISES or (ii) resulting from any failure by SUBTENANT to perform or observe any covenant or agreement to be performed or observed by SUBTENANT under this Sublease, but only to the extent such Losses are not caused by the gross negligence or willful misconduct of SUBLANDLORD. The provisions of this subparagraph 15(a) shall expressly survive the expiration or earlier termination of this Sublease.

(b) SUBLANDLORD Indemnity. SUBLANDLORD, promptly following demand by SUBTENANT, shall indemnify and hold SUBTENANT safe and harmless from and against any and all Losses (i) on account of the death of or injury to any person or persons or the damage to or destruction of any property arising from or growing out of SUBLANDLORD's use and occupancy of the Shared Site other than the SUBLEASED PREMISES (including without limitation the portions of Buildings 336 and 400 not occupied by SUBTENANT) or (ii) resulting from any failure by SUBLANDLORD to perform or observe any covenant or agreement to be performed or observed by SUBLANDLORD under this Sublease, but only to the extent such Losses are not caused by the gross negligence or willful misconduct of SUBTENANT. Nothing

in this subparagraph 15(b) is intended to limit or otherwise affect SUBLANDLORD's indemnity obligations to SUBTENANT relating to environmental matters as provided in subparagraph 5(g) of this Sublease. The provisions of this subparagraph 15(b) shall expressly survive the expiration or earlier termination of this Sublease.

(c) Limitations. All indemnity obligations of SUBLANDLORD and SUBTENANT arising under this Sublease, and all claims, demands, damages and losses assertable by SUBLANDLORD and SUBTENANT against the other in any suit or cause of action arising out of or relating to this Sublease, the SUBLEASED PREMISES or the Shared Site, or the use and occupancy thereof, are limited as follows:

(i) By the releases and waivers expressed herein, including, without limitation, the mutual releases and waivers of rights set forth in Paragraph 12 above and subparagraph 20(d) below;

(ii) All claims for indemnification and other recoveries shall be limited to direct, proximately caused damages and exclude all consequential or indirect damages, including, but not limited to, business loss or interruption, suffered by the party asserting the claim or seeking the recovery; and

(iii) In the event that SUBLANDLORD and SUBTENANT (or the persons for whom they are liable as expressly set forth herein) are determined to be contributorily responsible for the indemnified injury or loss, each indemnitor's obligation shall be limited to the indemnitor's equitable share of the losses, costs or expenses to be indemnified against based on the relative culpability of each indemnifying person whose negligence or misconduct contributed to the injury or loss.

16. EVENTS OF DEFAULT AND REMEDIES.

(a) General. Each of the following, if so declared in writing by SUBLANDLORD, shall constitute an "Event of Default" by Tenant under this Sublease:

(i) if SUBTENANT fails to pay any base rent or Additional Rent when due and payable hereunder or under the Shared Utilities and Ancillary Rent Services Exhibit and such failure continues for a period of ten (10) days after written notice thereof is given to SUBTENANT by SUBLANDLORD;

(ii) if SUBTENANT fails to comply with all applicable Laws and with all PSGs and Site Security Policies and Standards and such failure continues for a period of ten (10) days after written notice thereof is given to SUBTENANT by SUBLANDLORD; provided, however, in the event any such failure by SUBTENANT is deemed by SUBLANDLORD to create a material threat to safety, health or the environment or to create the possibility of a material adverse effect on the other businesses of SUBLANDLORD or its affiliates at the Shared Site, then an Event of Default shall be deemed to have occurred if SUBLANDLORD identifies such threat or possibility in its notice to SUBTENANT and SUBTENANT thereafter fails to cure such failure immediately upon its receipt of SUBLANDLORD's notice even if such notice is verbal notice; or

(iii) if Tenant fails to perform or observe any covenant or agreement set forth in this Sublease (other than the covenants described in clauses (i) and (ii) above) in accordance with the terms thereof and such failure continues for a period of thirty (30) days after written notice thereof is given to SUBTENANT by SUBLANDLORD; provided, however, that if the failure cannot, by its nature, be cured within thirty (30) days, then an Event of Default shall not be deemed to have occurred so long as SUBTENANT diligently pursues the cure of such failure to completion.

(b) Additional Events of Default. Any of the following shall also constitute an Event of Default: (i) SUBTENANT is adjudicated a bankrupt, (ii) SUBTENANT institutes proceedings for a reorganization or for an arrangement under the bankruptcy laws of the United States codified as Title 11 of the United States Code ("Bankruptcy Act") or (iii) an involuntary petition in bankruptcy is filed against SUBTENANT under the Bankruptcy Act, which is not dismissed or vacated within ninety (90) days.

(c) Remedies. Upon the declaration of an Event of Default under subparagraphs 16(a) or 16(b), SUBLANDLORD (i) shall have the right, upon the giving of five (5) days' advance written notice to SUBTENANT, to terminate this Sublease and if such Event of Default shall not have been cured by SUBTENANT within such five (5) day period, this Sublease shall terminate and expire at midnight on such fifth day, and (ii) shall have all other rights and remedies provided by law or in equity.

17. EMINENT DOMAIN. If the whole or any part of the SUBLEASED PREMISES shall be taken by any public authority under the power of eminent domain such as to materially interfere with SUBTENANT's use thereof as permitted under Paragraph 5(a) hereof, then the terms of this Sublease shall cease on the part so taken on the date possession of that part is surrendered, and from that day SUBTENANT shall have the right either (i) to cancel this Sublease and declare the same null and void, giving written notice to SUBLANDLORD of same, and to be entitled to any unearned rent paid or credited in advance, or (ii) to continue in possession of the remainder of the SUBLEASED PREMISES under the terms herein provided, giving written notice to SUBLANDLORD of same, except that the base rent and SUBTENANT'S SHARE shall be equitably adjusted by SUBLANDLORD and SUBTENANT as may be appropriate in light of the portions of the Building taken in such proceeding. Notwithstanding anything to the contrary contained herein, SUBTENANT shall not be entitled to share in any portion of the award in respect of such taking.

18. PRIME LEASE; SUBORDINATION AND NON-DISTURBANCE.

(a) Prime Lease. In order to induce SUBTENANT to enter into this Sublease, SUBLANDLORD represents and warrants to SUBTENANT that: (i) SUBLANDLORD is the owner of the land on which the Shared Site is located, (ii) Du Pont De Nemours and Company, L.L.C. ("Building Owner") owns the buildings in which the SUBLEASED PREMISES are located and is permitted to maintain such buildings on the land by SUBLANDLORD, as land owner, pursuant to an easement agreement ("Easement Agreement"), (iii) Building Owner has leased the buildings in which the SUBLEASED PREMISES are located to Acorn Leasing, L.L.C. ("Prime Landlord") pursuant to a lease agreement (the "Prime Lease"), (iv) Building Owner has given a mortgage (the "Mortgage") encumbering the buildings in which the

SUBLEASED PREMISES are located (and certain other real property) to Laurel N.A., L.L.C. ("Mortgagee"), (v) there are no leases, mortgages, judgments or any other matters superior to the interest of SUBTENANT in the SUBLEASED PREMISES other than the Easement Agreement, the Prime Lease and the Mortgage, (vi) each of the Easement Agreement, the Prime Lease and the Mortgage is in full force and effect and there exists no state of facts and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default by any party thereto, (vii) SUBLANDLORD has the right and authority under the Easement Agreement, the Prime Lease and the Mortgage to enter into this Sublease, and Building Owner, Prime Landlord and Mortgagee each hereby joins in the execution of this Sublease to evidence its consent thereto, and (viii) there are no terms or provisions of the Easement Agreement, the Prime Lease or the Mortgage which impose any duty or obligation upon SUBTENANT or which place any restriction upon SUBTENANT's use of the SUBLEASED PREMISES beyond what is contained in this Sublease.

(b) Current Subordination and Non-Disturbance; Indemnity. SUBLANDLORD, as land owner, Building Owner, Prime Landlord and Mortgagee each hereby joins in the execution of this Sublease to evidence its agreement that if (and for as long as) no event of default by SUBTENANT under this Sublease has occurred and is continuing, then (i) SUBTENANT shall not be made a party to any action or proceeding by any of them to recover possession of the property of which the SUBLEASED PREMISES forms a part, (ii) SUBTENANT shall not be made a party to the termination of any interest in the SUBLEASED PREMISES that is senior to the interest of SUBTENANT or any proceeding related thereto, (iii) SUBTENANT's possession shall not be disturbed, and (iv) this Sublease shall not be canceled or terminated and shall continue in full force and effect upon such foreclosure, termination or recovery of possession upon all the terms, covenants, conditions and agreements set forth in this Sublease. If any of SUBLANDLORD, as land owner, Building Owner, Prime Landlord or Mortgagee acquires the right to possession of the SUBLEASED PREMISES, SUBTENANT shall, if requested, attorn to and become the tenant of the party acquiring the right to possession upon the same terms and conditions as are set forth herein for the balance of the Term.

(c) Future Subordination and Non-Disturbance. This Sublease and the estate, interest and rights hereby created will be subordinate to any mortgage or mortgages hereafter placed upon the Shared Site or any estate or interest therein, and to all renewals, modifications, consolidations, replacements and extensions of the same, and any substitutes therefor, so long as the holder of any such mortgagee enters into a subordination/recognition and non-disturbance agreement with SUBTENANT on terms and conditions that are mutually acceptable to SUBLANDLORD, SUBTENANT, the holder and any other party with an interest in the SUBLEASED PREMISES that is superior to this Sublease.

19. WAIVER OF LANDLORD'S LIEN. SUBLANDLORD, and PRIME LANDLORD by consenting to this Sublease in writing, hereby acknowledge and agree that no lien, security interest or claim shall be asserted by SUBLANDLORD or PRIME LANDLORD or be allowed to attach to personal property or fixtures within the SUBLEASED PREMISES which are owned or leased by SUBTENANT or any third party.

20. SURRENDER. On or before the Expiration Date or prior termination of this Sublease, SUBTENANT shall peaceably surrender the SUBLEASED PREMISES, and the SUBLEASED PREMISES shall be turned over to SUBLANDLORD (i) in substantially the condition existing on the date of this Sublease (ordinary wear and tear, damage by casualty and repairs that are SUBLANDLORD's responsibility hereunder excepted), (ii) in compliance with the conditions and requirements specified in subparagraphs 5(f), 5(g), 10(b) and 10(c) and in Paragraph 7, (iii) having been decommissioned in accordance with all applicable Laws, including Environmental Laws, and in accordance with SUBLANDLORD's PSGs, and (iv) having been decontaminated in accordance with the procedures set forth on Exhibit "G." Any personal property remaining within the SUBLEASED PREMISES after termination shall be treated as provided for in Paragraph 10 hereof.

21. INSURANCE.

(a) SUBTENANT's Insurance. SUBTENANT shall obtain and keep in effect during the term of this Sublease, from one or more reputable insurance companies licensed to do business in the State of Delaware:

(i) Comprehensive general liability insurance policy (Occurrence Form), including Blanket Contractual Liability, Product/Completed Operations, Broad Form Property Damage, and Personal Injury in a combined single limit for Bodily Injury and Property Damage not less than $2,000,000 per occurrence. Such policy shall name SUBLANDLORD and Prime Landlord as additional insureds and shall contain a waiver of subrogation in favor of SUBLANDLORD and Prime Landlord. Each such policy shall contain a thirty (30) day prior written notice provision to SUBLANDLORD prior to any such cancellation or termination. SUBTENANT may provide its insurance coverage for the SUBLEASED PREMISES through a blanket or umbrella policy.

(ii) Workers' Compensation—Statutory; Employer's Liability—$1,000,000 per accident/per employee; and such other generic insurance as may be required by law.

(iii) Business Auto Liability, in a combined single limit for Bodily Injury and Property Damage—$1,000,000 per occurrence.

SUBTENANT shall further file a certificate of insurance evidencing the above required minimum coverage with SUBLANDLORD's designee. Neither the failure of SUBTENANT to comply with any or all of the insurance provisions of this Sublease, nor the failure to secure endorsements on policies as may be necessary to carry out the terms and provisions of this Sublease, shall be construed to limit or relieve SUBTENANT from any of its obligations under this Sublease, including this insurance paragraph.

(b) SUBLANDLORD's Insurance. SUBLANDLORD shall either obtain and keep in effect fire and extended coverage casualty insurance ("Casualty Insurance") in the amount of the full replacement cost of the SUBLEASED PREMISES or, if permitted by subparagraph 20(c) below, establish a self-insurance program in lieu of obtaining third party insurance in accordance with the requirements of subparagraph 20(c). Neither the failure of

SUBLANDLORD to comply with any or all of the insurance provisions of this Sublease, nor the failure to secure endorsements on policies as may be necessary to carry out the terms and provisions of this Sublease, shall be construed to limit or relieve SUBLANDLORD from any of its obligations under this Sublease, including this insurance paragraph.

(c) Self-Insurance. Notwithstanding anything to the contrary contained herein, for so long as (i) E.I. du Pont de Nemours and Company is the SUBLANDLORD hereunder, (ii) E.I. du Pont de Nemours and Company has a net worth in excess of $2,000,000,000, and (iii) E.I. du Pont de Nemours and Company has an investment grade credit rating from each of the nationally recognized rating agencies then rating its debt, SUBLANDLORD may self-insure in lieu of obtaining or keeping in effect third party insurance (including, without limitation, Casualty Insurance) relating to the Shared Site, including the SUBLEASED PREMISES.

(d) Release and Waiver of Subrogation. Any provision of this Sublease to the contrary notwithstanding, SUBLANDLORD and SUBTENANT hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise (i) from any and all liability for any loss or damage to the property of the releasing party, (ii) for any loss or damage that may result, directly or indirectly, from the loss or damage to such property (including rental value and business interruption), and (iii) from legal liability for any loss or damage to property (no matter who the owner of the property may be), all to the extent that the releasing party's loss or damage is insured or, if not insured, was insurable under commercially available fire and extended coverage property insurance policies, including additional coverages typically obtained by owners and tenants of comparable premises, even if such loss or damage or legal liability shall be caused by or result from the fault or negligence of the other party or anyone for whom such party may be responsible and even if the releasing party is self insured in whole or in part or the amount of the releasing party's insurance is inadequate to cover the loss or damage or legal liability. It is the intention of the parties that SUBLANDLORD and SUBTENANT shall look solely to their respective insurance carriers or self-insurance programs for recovery against any such property loss or damage or legal liability, without (in the case of third party coverage) such insurance carriers having any rights of subrogation against the other party.

22. QUIET ENJOYMENT. SUBLANDLORD warrants its right to create the Subleasehold interest created herein and covenants that SUBTENANT, upon paying the rent and all other sums and charges to be paid by it under this Sublease, and observing and keeping all covenants, agreements and conditions of this Sublease on its part to be kept, shall have peaceful, quiet and uninterrupted possession of the SUBLEASED PREMISES during the Term of this Sublease.

23. MAINTENANCE OF RECORDS/INSPECTION. SUBLANDLORD shall maintain or cause to be maintained in the ordinary course of business, books and records relating to its calculation of rent due hereunder and the costs of water, electric and fuel oil adjustments charged to SUBTENANT hereunder. SUBLANDLORD shall make such records available for inspection by SUBTENANT during regular business hours and upon reasonable notice (or by an independent accountant or other designee of SUBTENANT to which SUBLANDLORD does not have reasonable objection); provided, however, that any such inspection by SUBTENANT shall

not occur more than once each year and shall be conducted in a manner which does not interfere unreasonably with the operation of the day-to-day business affairs of SUBLANDLORD.

24. JURISDICTION; FORUM; ETC. Any controversy, claim or issue arising out of or relating to either party's performance under this Sublease or the interpretations, validity or effectiveness of this Sublease shall, upon the written request of either party, be referred to designated senior management representatives of SUBLANDLORD and SUBTENANT for resolution. Such representatives shall promptly meet and, in good faith, attempt to resolve the controversy, claim or issue referred to them. If SUBTENANT and SUBLANDLORD cannot so resolve such controversy, claim or issue, then upon written notice from either party within the next sixty (60) days, the parties will attempt in good faith to resolve the dispute through mediation to be held in Wilmington, Delaware, unless the parties otherwise agree upon another location. If the controversy, claim or issue is not resolved through mediation, then such controversy, claim or issue shall be settled by binding arbitration before the American Arbitration Association ("AAA") to be held in Wilmington, Delaware, unless the parties otherwise agree upon another location. Such arbitration shall be conducted in accordance with AAA's then current Commercial Arbitration Rules. The award rendered by the arbitrator or arbitrators shall be final and unappealable, and judgment may be entered upon the award in accordance with applicable law in any Court having jurisdiction thereof. The non-prevailing party in such arbitration shall be required to reimburse the prevailing party its reasonable attorneys' fees and costs incurred in such arbitration and any action to enter judgment upon the arbitration award.

25. NOTICES. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, telecopied (which is confirmed) or sent by registered or certified mail (postage prepaid, return receipt requested) or by a nationally recognized overnight delivery service to the parties at the following addresses:

If to SUBTENANT, to:
Incyte Corporation
3160 Porter Drive
Palo Alto, CA 94304
Attn.: Robin Weckesser, Sr. Director, Real Estate and Facilities

With a courtesy copy to:
Incyte Corporation
3160 Porter Drive
Palo Alto, CA 94304
Attn.: General Counsel

If to SUBLANDLORD, to:
E. I. du Pont de Nemours and Company
1007 Market Street
Wilmington, DE 19898
Attn: Corporate Real Estate
Room: D-12090

or to such other address as SUBLANDLORD or SUBTENANT may specify by notice to the other (provided that notice of any change of address shall be effective only upon receipt thereof).

26. CORPORATE COVENANTS AND REPRESENTATIONS. Each person executing this Sublease on behalf of SUBLANDLORD and SUBTENANT hereby covenants and warrants that SUBLANDLORD or SUBTENANT, as applicable, is a duly constituted corporation qualified to do business in the State of Delaware and that such person is duly authorized to execute and deliver this Sublease on behalf of SUBTENANT.

27. INTEGRATION. This Sublease and the documents referred to herein set forth all the agreements, conditions and understandings between SUBLANDLORD and SUBTENANT relative to the SUBLEASED PREMISES, and there are no promises, agreements, conditions or understandings, either oral or written, between them other than that certain Confidentiality Agreement dated February 5, 2002 by and between them (which agreement may be amended from time to time). No subsequent alteration, amendment, supplement, change or addition to this Sublease shall be binding upon SUBLANDLORD or SUBTENANT unless reduced to writing and signed by both parties hereto.

28. NO PARTNERSHIP. The parties do not intend to create any partnership or joint venture between themselves with respect to the SUBLEASED PREMISES or any other matter. In all matters relating to this Sublease, both parties will be acting solely as independent contractors and will be solely responsible for the acts of their employees, officers, directors, contractors and agents. Employees, agents, or contractors of one party shall not be considered employees, agents, or contractors of the other party. Neither party shall have the right, power, or authority to create any obligation, express or implied, on behalf of the other party.

29. GOVERNING LAW. This Sublease shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws.

30. HEADINGS. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Sublease.

31. SEVERABILITY. The invalidity or unenforceability of any provision of this Sublease shall not affect the validity or enforceability of any other provisions of this Sublease, each of which shall remain in full force and effect.

32. SUCCESSION. This Sublease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

33. COUNTERPARTS. This Sublease may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

34. INTERPRETATION.

(a) Reference to any law, or to any provision of any law, in this Sublease shall include any modification or reenactment of that legislation or legislation substituted therefor and all legislation, orders, regulations and amendments issued under such legislation.

(b) Reference to any party shall include a reference to its legal successors and permitted assignees.

35. BROKERS. SUBLANDLORD covenants, represents and warrants to SUBTENANT that SUBLANDLORD has had no dealing or negotiations with any broker or agent or finder with respect to this Sublease. SUBTENANT covenants, represents and warrants to SUBLANDLORD that SUBTENANT has had no dealing or negotiations with any broker or agent or finder with respect to this Sublease. SUBLANDLORD and SUBTENANT each covenant and agree to pay, hold harmless and indemnify the other from and against any and all costs, expenses, including reasonable attorneys' fees, and liability for any compensation, commissions or charges claimed by any broker or agent with whom the indemnifying party has had any dealings or negotiations with respect to this Sublease.

36. FORCE MAJEURE. "Force Majeure" means, for either party, any circumstance(s) beyond the reasonable control of that party, which prevents full performance of an obligation hereunder. For the avoidance of doubt, the following circumstances shall also constitute a Force Majeure event: failure by a third party to supply (in whole or in part) any utilities or ancillary rent service to the extent that such failure prevents, hinders or delays SUBLANDLORD's ability to provide that utility or ancillary rent service to SUBTENANT; a Governmental Authority notifies SUBLANDLORD or commences a legal or administrative action alleging that provision of utilities or ancillary rent services results in SUBLANDLORD being deemed a public utility. The party affected by an event constituting Force Majeure shall be excused from performance of its obligations under or pursuant to this Sublease if, and to the extent that, performance of such obligations is delayed, hindered or prevented by such Force Majeure. A Force Majeure may excuse a delay in making any payment due hereunder where the delay in payment was caused by the Force Majeure, but otherwise the parties shall continue to make payments due hereunder for the remaining utilities or ancillary rent services provided hereunder. If a party is in a position of Force Majeure or is aware of the likelihood of a situation constituting Force Majeure arising, it shall notify the other party in writing promptly of the cause and extent of such non-performance or likely non-performance, the date or likely date of commencement thereof and the means proposed to be adopted to remedy or abate the Force Majeure, and the parties shall consult with a view to take such steps as may be appropriate to mitigate the effects of such Force Majeure. If any such Force Majeure continues for more than fifteen (15) days and materially interferes with SUBTENANT's use and enjoyment of the SUBLEASED PREMISES, SUBLANDLORD shall proportionately reduce the rent due hereunder during the period of material interference.

37. SURVIVAL. The expiration or termination of this Sublease shall not affect any rights or obligations that have arisen or accrued hereunder before such expiration or termination.

38. CONFIDENTIALITY. Each of SUBLANDLORD and SUBTENANT will not use any Confidential Information (defined below) for any purpose other than complying with its obligations under this Sublease and under Environmental Laws and other similar laws relating to

health, safety and public welfare. Furthermore, each of SUBLANDLORD and SUBTENANT will not disclose or otherwise make available any Confidential Information to any other person, firm, corporation or other entity, except to the extent required by applicable law, regulation or court order (including without limitation any securities filings), provided in each case that the disclosing party (a) has given prompt advance written notice to the other (except that no notice shall be required in the case of securities filings) and (b) has made a reasonable legal determination that such Confidential Information must be disclosed. For the purposes of this Sublease, "Confidential Information" means business, financial and scientific written information which is disclosed in the course of the dealings in connection with this Sublease and is designated in writing as "Confidential." Such Confidential Information shall not apply to information which:

(a) was known by either party prior to receipt hereunder, as evidenced by the written records of the party claiming this exemption;

(b) was generally known to the public prior to receipt hereunder;

(c) subsequent to receipt hereunder becomes generally known to the public other than by act or omission on the part of the party claiming this exemption; or

(d) subsequent to receipt hereunder, is made available to by a third party who is legally entitled to do so.

The obligations of the parties described in this paragraph will apply to any Confidential Information disclosed to either in connection with that certain lease dated February 26, 2002 between the parties for space at the Stine-Haskell Research Center, which lease is being terminated on or about the date of this Sublease. All obligations of confidentiality shall survive the expiration or termination of the above –mentioned lease and this Sublease for a period of one (1) year from said date of expiration or termination.

39. DATA TRANSFER AND PRIVACY. Unless otherwise agreed by the parties in writing, any personal information provided by one party to the other hereunder may only be used for conducting the transactions that are the subject of this Sublease. Personal information means any information by which the identity of a person could be revealed. Examples of personal information include, but are not limited to, name, address, telephone number, date of birth, social security number, e-mail address or any combination thereof.

40. NON-SOLICITATION OF SUBLANDLORD EMPLOYEES. SUBTENANT will not recruit or solicit for employment any of SUBLANDLORD's current employees.

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IN WITNESS WHEREOF, the parties hereto have caused this Sublease to be executed as of the day and year first above written.

Witness:

/s/ LOIS J. SMITH

E. I. DU PONT DE NEMOURS AND COMPANY

By: /s/ DIANE L. BOC

Title: Manager Corporate Real Estate U.S. Region

Witness:

/s/ ROBIN WECKESSER

Sr. Director Real Estate and Facilities

INCYTE CORPORATION

By: /s/ JOHN VUKO

Title: CFO

JOINDER OF BUILDING OWNER, PRIME LANDLORD AND MORTGAGEE

Each of Building Owner, Prime Landlord and Mortgagee join in the execution of this Sublease for the purpose of confirming its agreements to Paragraph 18 of this Sublease.

Witness:

/s/ ANN BATES

DU PONT DE NEMOURS AND COMPANY, L.L.C.

By: /s/ KAREN K. MENEELY

Title: Manager

Witness:

/s/ ANN BATES

ACORN LEASING, L.L.C.

By: /s/ KAREN K. MENEELY

Title: Manager

Witness:

/s/ ANN BATES

LAUREL N.A., L.L.C.

By: /s/ KAREN K. MENEELY

Title: Manager

Exhibit 31.1

CERTIFICATION

I, Paul A. Friedman, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Incyte Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2003

/s/ PAUL A. FRIEDMAN

PAUL A. FRIEDMAN
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, John M. Vuko, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Incyte Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:
   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2003

/s/ JOHN M. VUKO

JOHN M. VUKO
Chief Financial Officer

Exhibit 32.1

STATEMENT PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

With reference to the Quarterly Report of Incyte Corporation (the "Company") on Form 10-Q for the quarter ended June 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Paul A. Friedman, Chief Executive Officer of the Company, certify, for the purposes of 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ PAUL A. FRIEDMAN

PAUL A. FRIEDMAN
Chief Executive Officer
August 13, 2003

Exhibit 32.2

STATEMENT PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

With reference to the Quarterly Report of Incyte Corporation (the "Company") on Form 10-Q for the quarter ended June 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John M. Vuko, Chief Financial Officer of the Company, certify, for the purposes of 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ JOHN M. VUKO

JOHN M. VUKO
Chief Financial Officer
August 13, 2003