SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2004

or

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

For the transition period from to

Commission File No. 0-19731

GILEAD SCIENCES, INC.

(Exact name of registrant as specified in its charter)

Delaware	**94-3047598**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
333 Lakeside Drive, Foster City, California	**94404**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **650-574-3000**

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT: **NONE**

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

COMMON STOCK $.001 PAR VALUE
(Title of Class)

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (Section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

The aggregate market value of the voting stock held by non-affiliates of the registrant based upon the closing price of the Common Stock on the Nasdaq Stock Market on June 30, 2004 was $14,064,813,000.*

The number of shares outstanding of the Registrant's Common Stock on February 28, 2005 was 449,881,860.**

DOCUMENTS INCORPORATED BY REFERENCE

Specified portions of Registrant's Definitive Proxy Statement filed with the Commission pursuant to Regulation 14A in connection with the 2005 Annual Meeting are incorporated by reference into Part III of this Report.

* Based on a closing price of $33.50 per share. Excludes 10,577,134 shares of the registrant's common stock held by executive officers, directors and stockholders whose ownership exceeds 5% of the Common Stock outstanding at June 30, 2004. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the Registrant or that such person is controlled by or under common control with the Registrant.

** On September 3, 2004, the Registrant implemented a two-for-one stock split in the form of a stock dividend. All share and per share amounts for all periods presented have been restated to reflect this stock split.

GILEAD SCIENCES, INC.

2004 Form 10-K Annual Report

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We own or have rights to various trademarks, copyrights and trade names used in our business including the following: GILEAD®, GILEAD SCIENCES®, HEPSERA®, VIREAD®, VISTIDE®, DAUNOXOME®, AMBISOME®, EMTRIVA®, TRUVADA®. MACUGEN® is a registered trademark belonging to Eyetech Pharmaceuticals, Inc., SUSTIVA® is a registered trademark of Bristol-Myers Squibb Company and TAMIFLU® is a registered trademark belonging to Hoffmann-La Roche. This report also includes other trademarks, service marks and trade names of other companies.

PART I

ITEM 1. BUSINESS

Forward-Looking Statements and Risk Factors

This report includes forward-looking statements. In particular, statements about our expectations, beliefs, plans, objectives or assumptions of future events or performance are contained or incorporated by reference in this report. We have based these forward-looking statements on our current expectations about future events. While we believe these expectations are reasonable, forward-looking statements are inherently subject to risks and uncertainties, many of which are beyond our control. Our actual results may differ materially from those suggested by these forward-looking statements for various reasons, including those discussed in this report under the heading "Risk Factors That Affect Gilead" beginning at page 15. Given these risks and uncertainties, you are cautioned not to place undue reliance on forward-looking statements. The forward-looking statements included in this report are made only as of the date hereof. We do not undertake and specifically decline any obligation to update any of these statements or to publicly announce the results of any revisions to any forward looking statements to reflect future events or developments. When used in the report, unless otherwise indicated, "we," "our" and "us" refers to Gilead and its subsidiaries.

Overview

Gilead Sciences, Inc. is a biopharmaceutical company that discovers, develops and commercializes therapeutics to advance the care of patients suffering from life-threatening diseases. We are a multinational company with eight approved products. We focus our research and clinical programs on anti-infectives. We are seeking to add to our existing portfolio of products through our internal discovery and clinical development programs and through an active product acquisition and in-licensing strategy.

Our worldwide headquarters are in Foster City, California and our European headquarters are in Paris, France. We were incorporated in Delaware on June 22, 1987.

Our Products

- ***Viread*** is an oral formulation of a nucleotide analogue reverse transcriptase inhibitor, dosed once a day as part of combination therapy to treat human immunodeficiency virus (HIV) infection in adults. We sell Viread in the United States through our U.S. commercial team and wholesalers, in the major European countries through our European commercial team and distributors, and in Japan through our corporate partner, Japan Tobacco. W e have an exclusive, worldwide license to patent rights and related technology for Viread from the Institute of Organic Chemistry and Biochemistry (part of the Academy of Sciences of the Czech Republic) and Rega Stichting v.z.w. (together, IOCB/REGA).
- ***Emtriva*** is an oral formulation of a nucleoside analogue reverse transcriptase inhibitor, dosed once a day as part of a combination therapy to treat HIV infection in adults. We sell Emtriva in the United States through our U.S. commercial team and wholesalers and in the major European countries through our European commercial team and distributors. We have an exclusive, worldwide license to patent rights and related technology for Emtriva from Emory University.
- ***Truvada*** is an oral tablet dosed once a day as part of a combination therapy to treat HIV infection in adults. It is a fixed-dose combination of our anti-HIV medications Emtriva and Viread. Truvada combines 200 mg of emtricitabine (Emtriva) and 300 mg of tenofovir disoproxil fumarate (Viread). Truvada is currently sold in the United States through our U.S. commercial team and wholesalers. Our international commercial team began launching Truvada in the European Union following recent

regulatory approval in February 2005. We have an exclusive, worldwide license to patent rights and related technology for the components of Truvada from IOCB/REGA and Emory University.

- ***AmBisome*** is a proprietary liposomal formulation of amphotericin B, a powerful antifungal agent to treat serious invasive fungal infections caused by various fungal species. By delivering amphotericin B in our proprietary liposomal formulation, AmBisome reduces the rate and severity of kidney toxicity and injection-related reactions associated with amphotericin B and allows patients to receive higher doses of amphotericin B. AmBisome is approved for sale in more than 45 countries, including the United States and the countries of the European Union. In more than 20 of the countries where AmBisome is approved, including the United States, we are authorized to promote AmBisome for empirical treatment of fungal infections, that is, treatment of patients where a strong suspicion, without definite confirmation, exists for a potentially life-threatening invasive fungal infection. In the remaining countries, AmBisome is approved for use either as first-line treatment of serious invasive fungal infection or as second-line treatment after conventional amphotericin B therapy fails or when conventional amphotericin B cannot be tolerated. We market AmBisome in the major countries of Europe and co-promote AmBisome in the United States with Fujisawa Healthcare, Inc. (Fujisawa).

- ***Hepsera*** is an oral formulation of a nucleotide analogue hepatitis B virus (HBV) DNA polymerase inhibitor, dosed once a day to treat chronic hepatitis B. Hepsera is approved for sale in the United States for the treatment of chronic hepatitis B in adults with evidence of active viral replication and either evidence of persistent elevations in serum aminotransferases (ALT or AST) or histologically active liver disease. Our U.S. commercial team and wholesalers sell Hepsera in the United States. We sell Hepsera in the major European Union countries through our European commercial team and distributors. We have licensed the rights to commercialize Hepsera solely for the treatment of hepatitis B in China, Japan, Korea, Taiwan, the rest of Asia, Latin America and certain other territories to GlaxoSmithKline (GSK), which launched Hepsera in Japan, South Korea and Taiwan in 2004 . We have an exclusive, worldwide license to patent rights and related technology for adefovir dipivoxil from IOCB/REGA.

- ***Vistide*** is an antiviral medication for the treatment of cytomegalovirus (CMV) retinitis in patients with AIDS. CMV retinitis is a condition characterized by lesions that form on a patient's retina that affects persons with weakened immune systems and is most common in patients with AIDS. Vistide is approved for sale and is sold in the United States by our U.S. commercial team, and by Gilead's ex-U.S. partner, Pfizer Inc. (Pfizer) (formerly Pharmacia Corporation), in 25 countries for the treatment of CMV retinitis in patients with AIDS.

- ***DaunoXome*** is a liposomal formulation of the anticancer agent daunorubicin. It is approved for sale and has been sold in more than 20 countries for the treatment of AIDS-related Kaposi's sarcoma. It is sold in the United States by our U.S. commercial team and by independent distributors abroad. In December 2003, we decided to discontinue selling this product; however, in 2004, we subsequently received unanticipated requests in Europe to reconsider selling DaunoXome. We are continuing to sell this product in a limited number of countries and are currently evaluating our supply and sales strategy with regard to this product.

Other Royalty Sources

- ***Macugen*** is an anti-angiogenic injection for the treatment of neovascular age-related macular degeneration (AMD). The drug is an inhibitor of vascular endothelial growth factor (VEGF), which is known to play a role in the development of certain ophthalmic diseases. Macugen was approved by the FDA in the United States in December 2004 and began selling in January 2005. The product is not yet approved outside the United States. Macugen was developed by Eyetech Pharmaceuticals, Inc.

(Eyetech), using technology licensed from us. Eyetech holds the exclusive rights to manufacture and sell Macugen worldwide, subject to Eyetech's obligation to pay us a percentage of the net revenues that Eyetech generates from Macugen sales. The patents to the technology we license to Eyetech expire in 2017 in the United States and Europe.

- ***Tamiflu*** is an oral pill for the treatment and prevention of influenza A and B. Tamiflu is in a class of prescription drugs called neuraminidase inhibitors. Tamiflu is approved in more than 60 countries, including the United States, Japan and the countries of the European Union for treatment of influenza in children and adults. Tamiflu is also approved in the United States and the European Union for the prevention of influenza in adolescents and adults. We developed Tamiflu with F. Hoffmann-LaRoche Ltd (Roche), and Roche has the exclusive right to manufacture and sell Tamiflu worldwide, subject to its obligation to pay us a percentage of the net revenues that Roche generates from Tamiflu sales, subject to reduction for certain defined manufacturing costs .

The following table lists aggregate product sales for our major products (in thousands):

	2004		2003		2002	
		% of Product Sales		% of Product Sales		% of Product Sales
Viread	$ 782,915	63%	$ 566,478	68%	$ 225,815	53%
Emtriva	57,600	5%	10,021	1%	—	—
Truvada	67,865	5%	—	—	—	—
Total HIV products	908,380	73%	576,499	69%	225,815	53%
AmBisome	211,688	17%	198,350	24%	185,669	44%
Other	122,156	10%	61,492	7%	12,395	3%
Total product sales	$ 1,242,224	100%	$ 836,341	100%	$ 423,879	100%

See Note 16 of the Consolidated Financial Statements for financial information about each geographic area in which our products are marketed.

Our Products in Clinical Trials

Research & Development

We are seeking to add to our existing portfolio of products through our internal discovery and clinical development programs and through an active product acquisition and in-licensing strategy, such as our acquisition of Triangle Pharmaceuticals, Inc. completed in January 2003. We have research scientists in Foster City and San Dimas, California and Durham, North Carolina engaged in the discovery and development of new molecules and technologies that we hope will lead to new medicines and novel formulations of existing drugs. Our therapeutic focus is in the area of life threatening infectious diseases. This research includes working with our proprietary nucleotide analogues to develop treatments for viral infections, particularly HIV and hepatitis C infection. In total, our research and development (R&D) expenses for 2004 were $223.6 million, compared with $181.8 million for 2003 and $141.9 million for 2002.

Our research efforts in the area of hepatitis C viral infection (HCV) include our collaborations with Chiron Corporation (Chiron), Genelabs Technologies (Genelabs) and Achillion Pharmaceuticals, Inc. (Achillion). In August 2003, we entered into an agreement with Chiron, to research, develop and commercialize small molecule therapeutics against certain HCV drug targets. In October 2004, we entered into a research and development agreement with Genelabs Technologies (Genelabs) to discover, develop and commercialize nucleoside, RNA polymerase inhibitors for the treatment of HCV infection. In November 2004, we entered into a research and development agreement with Achillion to discover and commercialize novel inhibitors of HCV replication. In addition, we have several in-house programs

designed to discover small molecule inhibitors of HCV RNA polymerase and HCV protease. While we believe that small molecule therapeutics for the treatment of HCV infection could one day lead to better treatment outcomes for patients, such programs will require extensive investments and will take many years. See Note 10 of consolidated financial statements for further discussion.

Commercial Operations

We have U.S. and international commercial sales operations. We have marketing subsidiaries in Australia, Canada, France, Germany, Greece, Ireland, Italy, New Zealand, Portugal, Spain and in the United Kingdom.

Our commercial teams promote our HIV and HBV products, Viread, Emtriva, Truvada and Hepsera, through direct field contact with physicians, hospitals, clinics and other healthcare providers who are involved in the treatment of patients with HIV (for our HIV products) or chronic hepatitis B (for Hepsera). The teams also promote AmBisome to infectious disease specialists, hematologists, intensive care units, hospitals, home health care providers and cancer specialists.

In some countries outside of the United States, we have agreements with third-party distributors, including distributors in certain countries where we have marketing operations, to promote, sell and distribute our products. These international distribution agreements generally provide that the distributor has the exclusive right to sell one or more of our products in a particular country or several countries for a specified period of time.

In December 2002, we announced a program pursuant to which we sell Viread at our cost to all countries in Africa and to the fifteen other countries designated “Least Developed” by the United Nations. We expanded this program in August 2004 to include Truvada. We are taking steps to ensure that the Viread and Truvada products sold under this program are used to serve patients in the developing world and are not diverted to other markets. See “International Distribution.”

Collaborative Relationships

As part of our business strategy, we establish collaborations with other companies to assist in the clinical development and/or commercialization of certain of our products and product candidates and to provide support for our research programs. We also evaluate opportunities for acquiring products or rights to products and technologies that are complementary to our business from other companies. The description and accounting for each of these relationships can be found in Note 10 to our consolidated financial statements included in this report. The following list is representative of our collaborative relationships:

Collaborator	Program Area	Year of Signing
Bristol-Myers Squibb	HIV	2004
Achillion	HCV	2004
Genelabs	HCV	2004
Japan Tobacco	HIV	2003
GlaxoSmithKline	Hepsera	2002
Archemix	SELEX technology	2001
Eyetech	Macugen	2000
Roche	Tamiflu	1996
Pfizer	Vistide	1996
Fujisawa	AmBisome	1991

Bristol-Myers Squibb Company

In December 2004, we entered into a collaboration agreement with Bristol-Myers Squibb Company (BMS) to develop and commercialize the fixed-dose combination of Gilead's Truvada and BMS's Sustiva® (efavirenz) in the United States. Structured as a joint venture, Gilead and BMS formed the limited liability company, Bristol-Myers Squibb & Gilead Sciences, LLC. If approved, the new product would be the first complete Highly Active Antiretroviral Therapy (HAART) treatment regimen for HIV available in a fixed-dose combination taken once daily. Fixed-dose combinations contain multiple medicines formulated together and may help simplify HIV therapy for patients and providers. Through the joint venture, the companies will work in partnership to complete development and U.S. regulatory filings for this fixed-dose regimen. Subject to receiving marketing approval of the fixed-dose regimen, the companies will share responsibility for commercializing the product in the United States. Both companies will provide funding and field-based sales representatives in support of promotional efforts for the combination product. Under the terms of the collaboration, Gilead and BMS will grant royalty-free sublicenses to the joint venture for the use of their respective company-owned technologies and will, in return, be granted a license to use jointly created intellectual property. Gilead's and BMS' ownership interests in the joint venture, which reflect their respective economic interests, are based on the fraction of the net selling price of the fixed-dose combination product attributable to Truvada and Sustiva, respectively, and will be adjusted on an annual basis. Since the net selling price for Truvada may change over time relative to the net selling price of Sustiva, both joint venturers' respective economic interests in the joint venture may vary annually.

Academic and Consulting Relationships

To supplement our research and development efforts, as part of our regular business we enter into arrangements with universities and medical research institutions. These arrangements often provide us with rights to patents, patent applications and technology owned by these institutions in return for payments and fees relating to our use of these rights.

Emory University and University of Georgia Research Foundation, Inc.

Emtricitabine . In April 1996, Triangle obtained, and in January 2003, we acquired as part of our acquisition of Triangle, an exclusive worldwide license to all of Emory University's rights to purified forms of emtricitabine for use in the HIV and the HBV fields. We are obligated to make certain milestone and royalty payments to Emory, including annual minimum royalties beginning the third year after the first FDA registration is granted for an anti-HIV product incorporating the emtricitabine technology in the United States and the third year after the first registration is granted for an anti-HBV product incorporating the emtricitabine technology in certain major market countries, for the HIV and HBV indications, respectively. In 2002, Triangle began paying license maintenance fees because development milestones had not yet been achieved.

In May 1999, Emory and GSK settled their litigation pending in the United States District Court relating to emtricitabine, and we became the exclusive licensee of all U.S. and foreign patents and patent applications filed by Burroughs Wellcome Co. on the use of emtricitabine to treat hepatitis B. Under settlement agreements, we are obligated to pay royalties to GSK on net sales of products containing emtricitabine. In addition, we and Emory also received access to development and clinical data and drug substance held by GSK relating to emtricitabine.

In May 2002, Emory, GSK and Shire Pharmaceuticals Group, plc (Shire) settled worldwide patent disputes involving lamivudine and emtricitabine. Under the terms of the settlement, Emory received an exclusive license from Shire under Shire's patents relating to emtricitabine and methods for its use and manufacture and Shire and GSK received exclusive licenses under Emory's patents relating to lamivudine. Under the terms of our license agreement with Emory, we automatically acquired an exclusive sublicense

to the Shire patents relating to emtricitabine granted under the terms of the settlement, thereby resolving all previously pending patent disputes regarding emtricitabine.

M.D. Anderson Cancer Center

In 1994, we entered into an agreement with the M.D. Anderson Cancer Center relating to Hepsera. Under this agreement, we currently pay M.D. Anderson Cancer Center a percentage of net revenues based upon our sales of Hepsera. The agreement with M.D. Anderson Cancer Center terminates the later of patent expiration or ten years from first commercial sale.

IOCB/REGA

In 1991 and 1992, we entered into agreements with IOCB/REGA relating to Viread, Hepsera and Vistide and subsequently amended the agreements in 2004 to include Truvada. Under these agreements, we received from IOCB/REGA the exclusive right to manufacture, use and sell the nucleotide compounds covered by these agreements. Under the agreements, we pay a percentage of net revenues based upon sales of Viread, Truvada, Hepsera and Vistide to IOCB/REGA. The agreements with IOCB/REGA terminate on an individual country basis on the later of patent expiration or ten years from first commercial sale. In addition, IOCB/REGA may terminate the licenses for a particular product in a key market in the absence of commercial sales of that product within 12 months after regulatory approval.

University License Equity Holdings, Inc.

We have an ongoing collaborative arrangement with University License Equity Holdings, Inc., (ULEHI), the successor to University Technology Corporation and its predecessor University Research Corporation, a technology holding company for the University of Colorado at Boulder, relating to its SELEX technology to identify aptamers. Under this arrangement, ULEHI has granted us all of its present and future rights to inventions covered by patents and patent applications for SELEX technology, improvements to SELEX technology it makes or discovers, oligonucleotides or other molecules it makes using SELEX technology and computer software related to SELEX technology. We are required to pay ULEHI certain variable royalties based on revenues generated from sales of products derived using the SELEX technology, including those revenues based our license agreement with Eyetech relating to Macugen

Developing World Collaborations

The Bill & Melinda Gates Foundation & Family Health International

In October 2002, we entered into an agreement with the Bill & Melinda Gates Foundation and Family Health International (FHI) to provide Viread for FHI's multinational clinical trial evaluating Viread's effectiveness as a method of reducing the risk of HIV infection among sexually active adults who are regularly exposed to HIV. The clinical trials, to be conducted by FHI, are funded by a $6.5 million, three-year grant from the Gates Foundation.

The DART Study

In November 2002, we entered into a collaborative agreement with the Medical Research Council (MRC) of the United Kingdom, Boehringer Ingelheim GmBH and GSK in connection with a five-year clinical study conducted by the MRC on antiretroviral HIV therapy in Africa. The trial is called the DART Trial (*D* evelopment of *A* nti *R* etroviral *T* herapy in Africa) and is aimed at studying clinical versus laboratory monitoring practices and structured treatment interruptions versus continuous antiretroviral therapy in adults with HIV infection in sub-Saharan Africa. We have agreed to provide Viread at no cost for the DART study.

The Institute for One World Health

In January 2003, we entered into an agreement with the Institute for One World Health, pursuant to which we will provide AmBisome at our cost for a Phase 3 clinical trial evaluating AmBisome for the treatment of visceral leishmaniasis with paromomycin in India, which has the greatest global burden of visceral leishmaniasis. The clinical trial will be conducted by the Institute for One World Health in partnership with the World Health Organization.

International Distribution

We have various agreements with distributors in Europe, Asia, Latin America, the Middle East and Africa that grant these distributors the exclusive right to sell Viread, Emtriva, Hepsera, AmBisome and DaunoXome in a particular country or countries for a specified period of time. Most of these agreements also provide for collaborative efforts between us and the distributor for obtaining regulatory approval for the product in the particular country and for marketing the product in the country. Most of these agreements establish a price that the distributor must pay for our product and require us to deliver quantities of the product ordered by the distributor.

Manufacturing

AmBisome

We manufacture AmBisome in commercial quantities in two separate but adjacent facilities in San Dimas, California. The Medicines Control Agency of the United Kingdom and the FDA have approved the commercial production of AmBisome in the facilities in which it is produced. To import AmBisome into the European Union, we own a manufacturing facility in Dublin, Ireland where we perform quality control testing, final labeling, packaging and distribution for the European Union and elsewhere.

We use commercially available materials and equipment to manufacture these products. Currently, we obtain the amphotericin B and the cholesterol that we use to manufacture AmBisome from single approved suppliers.

AmBisome is sold as a freeze-dried product. We currently freeze-dry AmBisome at our San Dimas manufacturing facility and also use a third party to freeze-dry additional product as needed. Given our current projections for AmBisome demand, we believe we have sufficient capacity to meet future demand. We also have the option of installing additional freeze-drying capacity in San Dimas should such additional supply become necessary. If we were unable to install additional freeze-drying capacity in San Dimas or locate appropriate third parties to meet this need, our ability to meet increased AmBisome demand would be diminished.

Macugen

We manufacture Macugen in commercial quantities at our FDA approved facilities in San Dimas, California, under our manufacturing agreement with Eyetech. We use commercially available materials and equipment to manufacture this product. Currently, Eyetech provides the raw materials used in the manufacture of Macugen, including pegaptanib sodium, the active ingredient in Macugen, through single approved suppliers contracted by Eyetech.

As part of the manufacturing process, we currently produce and fill Macugen at our San Dimas manufacturing facility. Given Eyetech's current projections for Macugen demand, we believe we have sufficient capacity to meet future demand. We also have the option of installing additional production and filling capacity in San Dimas should such additional supply become necessary. If we were unable to install additional production and filling capacity in San Dimas or locate appropriate third parties to meet this need, our ability to meet increased Macugen demand would be diminished.

Macugen is sold in liquid form and is filled into syringes in our San Dimas facilities. These syringes are supplied by a single approved supplier contracted by Eyetech.

Antiviral Products

We contract with third parties to manufacture our antiviral drugs for clinical and commercial purposes, including Viread, Emtriva, Truvada, Hepsera and Vistide.

We manufacture tenofovir disoproxil fumarate bulk drug substance through two contract manufacturers. Viread tablets are manufactured through two contract manufacturers.

We manufacture emtricitabine bulk drug substance through two contract manufacturers. Emtriva tablets are manufactured by one contract manufacturer for us and a second contract manufacturer is currently being qualified.

We manufacture Truvada tablets through a single contract manufacturer for the United States and a second contract manufacturer is currently being qualified.

We have obtained qualification in the United States and European Union for two contract manufacturers for adefovir dipivoxil bulk drug substance. We have two contract manufacturers for Hepsera tablet commercial supply in Europe. Of these two contract manufacturers, one is also qualified for commercial supply in the United States and the second is currently being qualified.

We have two suppliers that have been approved by the FDA and the European Union to manufacture cidofovir bulk drug substance, which is used in Vistide. We have a single FDA and EMEA approved supplier for Vistide drug product.

Roche is responsible for the manufacturing of Tamiflu. In January 2002, Roche announced that, due to production problems, the liquid suspension form of Tamiflu approved for treatment of children as young as one year-old was not available; however, the liquid suspension form of Tamiflu was returned to market in time for the 2002-2003 flu season. These production issues did not affect availability of the tablet form of Tamiflu for adults and adolescents 13 years and older. In Japan, where the 2002-2003 flu season was particularly severe, Roche's sublicensee, Chugai Corporation, was unable to meet the heightened demand satisfactorily. In January 2003, Chugai issued a press release attributing this failure, in part, to manufacturing problems. In November 2003, Chugai announced a recall of Tamiflu, resulting in reduced net sales and royalties from Roche in 2003. However, royalty income on Tamiflu net sales increased substantially in 2004 due primarily to a severe flu season in the United States in late 2003.

We have no commercial-scale manufacturing facilities for our antiviral products. For our future antiviral products, we will need to develop additional manufacturing capabilities and establish additional third party suppliers to manufacture sufficient quantities of our product candidates to undertake clinical trials and to manufacture sufficient quantities of any products that are approved for commercial sale. If we are unable to develop manufacturing capabilities internally or contract for large scale manufacturing with third parties on acceptable terms for our future antiviral products, our ability to conduct large-scale clinical trials and meet customer demand for commercial products would be adversely affected.

We believe that the technology we use to manufacture our products and compounds is proprietary. For our antiviral products, we have disclosed all necessary aspects of this technology to contract manufacturers to enable them to manufacture the products and compounds for us. We have agreements with these manufacturers that are intended to restrict them from using or revealing this technology, but we cannot be certain that these manufacturers will comply with these restrictions. In addition, these manufacturers could develop their own technology related to the work they perform for us that we may need to manufacture our products or compounds. We could be required to enter into an agreement with that manufacturer if we wanted to use that technology ourselves or allow another manufacturer to use that

technology. The manufacturer could refuse to allow us to use their technology or could demand terms to use their technology that are not acceptable.

We believe that we are in compliance with all material environmental regulations related to the manufacture of our products.

Patents and Proprietary Rights

Patents and other proprietary rights are very important to our business. If we have a properly designed and enforceable patent it can be more difficult for our competitors to use our technology to create competitive products and more difficult for our competitors to obtain a patent that prevents us from using technology we create. As part of our business strategy, we actively seek patent protection both in the United States and internationally and file additional patent applications, when appropriate, to cover improvements in our compounds, products and technology. We also rely on trade secrets, internal know-how, technological innovations and agreements with third parties to develop, maintain and protect our competitive position. Our ability to be competitive will depend on the success of this strategy.

We have a number of patents, patent applications and rights to patents related to our compounds, products and technology, but we cannot be certain that issued patents will be enforceable or provide adequate protection or that pending patent applications will result in issued patents. The following table shows the actual or estimated expiration dates in the United States and Europe for the primary patents and for patents that may issue under pending applications that cover the compounds in our marketed products and our product candidates:

Products	U.S. Patent Expiration	European Patent Expiration
Vistide	2010	2012
Hepsera	2014	2011
AmBisome	2016	2008
Tamiflu	2016	2016
Viread	2017	2018
Emtriva	2021	2016
Truvada	2021	2018

Patents covering Viread, Hepsera, Vistide, Emtriva and Truvada are held by third parties. We acquired exclusive rights to these patents in the agreements we have with these parties. See “Collaborative Relationships” and “Academic and Consulting Relationships.” Patents do not cover the active ingredients in AmBisome. Instead, we hold patents to the liposomal formulations of this compound and also protect formulations through trade secrets. We do not have patent filings covering all forms of Hepsera in China or in certain other Asian countries, although we do have applications pending in various Asian countries, including China, that relate to specific forms and formulations of Hepsera. Asia is a major market for HBV therapies.

We may obtain patents for our compounds many years before we obtain marketing approval for them. Because patents have a limited life, which may begin to run prior to the commercial sale of the related product, the commercial value of the patent may be limited. However, we may be able to apply for patent term extensions. For example, extensions for the patents on Vistide have been granted in the United States and a number of European countries, compensating in part for delays in obtaining marketing approval. Similar patent term extensions may be available for other products that we are developing, but we cannot be certain we will obtain them.

It is also very important that we do not infringe patents or proprietary rights of others and that we do not violate the agreements that grant proprietary rights to us. If we do infringe patents or violate these agreements, we could be prevented from developing or selling products or from using the processes

covered by those patents or agreements, or we could be required to obtain a license from the third party allowing us to use their technology. We cannot be certain that, if required, we could obtain a license to any third-party technology or that we could obtain one at a reasonable cost. If we were not able to obtain a required license, we could be adversely affected. Because patent applications are confidential for at least some period of time, including sometimes in the United States until a patent issues, there may be pending patent applications from which patents will eventually issue and prevent us from developing or selling certain products unless we can obtain a license to use the patented technology.

Patents relating to pharmaceutical, biopharmaceutical and biotechnology products, compounds and processes such as those that cover our existing compounds, products and processes and those that we will likely file in the future, do not always provide complete or adequate protection. Future litigation or reexamination proceedings regarding the enforcement or validity of our existing patents or any future patents could invalidate our patents or substantially reduce their protection. In addition, our pending patent applications and patent applications filed by our collaborative partners may not result in the issuance of any patents or may result in patents that do not provide adequate protection. As a result, we may not be able to prevent third parties from developing the same compounds and products that we have developed or are developing. In addition, certain countries do not permit enforcement of our patents, and manufacturers are able to sell generic versions of our products in those countries.

We also rely on unpatented trade secrets and improvements, unpatented internal know-how and technological innovation. In particular, a great deal of our liposomal manufacturing expertise, which is a key component of our liposomal technology, is not covered by patents but is instead protected as a trade secret. We protect these rights mainly through confidentiality agreements with our corporate partners, employees, consultants and vendors. These agreements provide that all confidential information developed or made known to an individual during the course of their relationship with us will be kept confidential and will not be used or disclosed to third parties except in specified circumstances. In the case of employees, the agreements provide that all inventions made by the individual while employed by us will be our exclusive property. We cannot be certain that these parties will comply with these confidentiality agreements, that we have adequate remedies for any breach, or that our trade secrets will not otherwise become known or be independently discovered by our competitors. Under some of our research and development agreements, inventions discovered in certain cases become jointly owned by us and our corporate partner and in other cases become the exclusive property of one of us. It can be difficult to determine who owns a particular invention and disputes could arise regarding those inventions.

Competition

Our products and development programs target a number of diseases and conditions, including viral and fungal infections. There are many commercially available products for these diseases and a large number of companies and institutions are spending considerable amounts of money and other resources to develop additional products to treat these diseases. Our current products compete with other available products based primarily on:

- efficacy;
- safety;
- tolerability;
- acceptance by doctors;
- patient compliance;
- patent protection;
- ease of use;

- price;
- insurance and other reimbursement coverage;
- distribution;
- marketing; and
- adaptability to various modes of dosing.

Any other products we market in the future will also compete with products offered by our competitors. If our competitors introduce data that show improved characteristics of their products, improve or increase their marketing efforts or simply lower the price of their products, sales of our products could decrease. We also cannot be certain that any products we may develop in the future will compare favorably to products offered by our competitors or that our existing or future products will compare favorably to any new products that are developed by our competitors. Our ability to be competitive also depends upon our ability to attract and retain qualified personnel, to obtain patent protection or otherwise develop proprietary products or processes and to secure sufficient capital resources for the substantial period that it takes to develop a product.

Our HIV Products . The HIV competitive landscape is becoming more crowded and complicated as treatment trends continue to evolve. A growing number of anti-HIV drugs are currently sold or are in advanced stages of clinical development. Of the twenty-six branded drugs available in the United States, Zerit (stavudine, d4T) sold by Bristol-Myers Squibb (BMS) and the fixed combination products, Combivir (AZT and 3TC), Trizivir (AZT, 3TC, ABC), each sold by GSK, represent the most direct competition for our HIV products. These companies are in the process of launching formulations of existing drugs now indicated by the FDA for once-daily oral dosing, including GSK's 300 mg dose of Epivir (lamivudine, 3TC). Other recently approved antiretroviral products include Epzicom (fixed dose combination of Ziagen and Epivir from GSK approved in the United States and European Union), Fuzeon (injectable integrase inhibitor from Roche/Trimeris), Reyataz (atazanivir sulfate, a once-a-day protease inhibitor from BMS) and Tipranavir (non-peptidic protease inhibitor from Boehringer-Ingelheim). GSK has filed an application for approval of a once-daily dose of Ziagen (abacavir sulfate). Other companies competing in the HIV therapeutic category are Pfizer, Merck and Abbott.

BMS's Videx EC (didanosine) became the first generic HIV product in the United States in 2004. GSK's Retrovir (AZT) is expected to face generic competition as early as in 2005 in the United States. The effect of this on the overall U.S. market for HIV products is unknown, but price decreases for all HIV products may result.

AmBisome . AmBisome faces strong competition from several current and expected competitors. Current competitors include:

- conventional amphotericin B, made by BMS and numerous generic manufacturers;
- caspofungin, a product developed by Merck, which is marketed as Cancidas in the United States and as Caspofungin elsewhere;
- voriconazole, developed by Pfizer, which is marketed as Vfend; and
- other lipid-based amphotericin B products approved for sale in the United States and throughout Europe, including Abelcet, sold by Enzon Corp. in the United States, Canada and Japan and by Medeus Pharma Ltd. in Europe, and Amphotec, sold by InterMune Pharmaceuticals, Inc.

Presently unapproved but expected competitors include a class of treatments called echinocandins , including Fujisawa's micafungin, which received marketing approval in Japan in October 2002 and is under review for regulatory approval in the United States and Canada, and anidulafungin, from Vicuron, Inc.

(formerly Versicor, Inc.) product candidate, which is being evaluated in multiple late-stage clinical trials. Finally, Schering Plough is developing Noxafil (posaconazole), which is currently in Phase 3 trials. Competition from these current and expected competitors has eroded and is likely to continue to erode the revenues we receive from sales of AmBisome.

Hepsera . Hepsera faces significant competition from existing and expected therapies for treating patients who are infected with HBV. Most significantly:

- Entecavir, an oral nucleoside analogue developed by BMS, is expected to be launched in late 2005 as a once daily oral antiviral. BMS has filed for approval with the U.S. FDA and has a Prescription Drug User Fee Act (PDUFA) action date of April 2005.
- Epivir-HBV (lamivudine) was developed by GSK in collaboration with Shire Pharmaceuticals, and is sold in all major countries throughout North and South America, Europe and Asia. It is an orally administered nucleoside analogue that inhibits HBV DNA polymerase.
- Intron-A (interferon alfa-2b) is sold by Schering Plough in major countries throughout North and South America, Europe and Asia. Intron-A is an injectable drug with immunomodulatory effects.

Hepsera may also face competition from clinical-stage candidates, including Idenix's LdT, an oral nucleoside analogue currently in Phase 3 trials, as well as Roche's Pegasys (pegylated interferon alfa-2a), which is expected to be approved for chronic hepatitis B in the United States in late 2005.

Tamiflu . Tamiflu competes with Relenza, an anti-flu drug that is sold by GSK. Relenza is a neuraminidase inhibitor that is delivered as an orally-inhaled dry powder. Generic competitors include Amantadine, an oral tablet that inhibits the replication of the influenza A virus and Rimantadine, also an oral antiviral.

Vistide . Vistide competes with a number of drugs that also treat CMV retinitis, including ganciclovir, sold in intravenous and oral formulations by Roche and as an ocular implant by Bausch & Lomb Incorporated; valganciclovir, also marketed by Roche; foscarnet, an intravenous drug sold by AstraZeneca; and, formivirsen, a drug injected directly into the eye sold by CibaVision.

A number of companies are pursuing the development of technologies competitive with our research programs. These competing companies include specialized pharmaceutical firms and large pharmaceutical companies acting either independently or together with biopharmaceutical companies. Furthermore, academic institutions, government agencies and other public and private organizations conducting research may seek patent protection and may establish collaborative arrangements for competitive products and programs.

We anticipate that we will face increased competition in the future as our competitors introduce new products to the market and new technologies become available. We cannot determine if existing products or new products that our competitors develop will be more effective or more effectively marketed and sold than any that we develop. Competitive products could render our technology and products obsolete or noncompetitive before we recover the money and resources we used to develop these products.

Government Regulation

Our operations and activities are subject to extensive regulation by numerous government authorities in the United States and other countries. In the United States, drugs are subject to rigorous FDA regulation. The Federal Food, Drug and Cosmetic Act and other federal and state statutes and regulations govern the testing, manufacture, safety, effectiveness, labeling, storage, record keeping, approval, advertising and promotion of our products. As a result of these regulations, product development and the product approval process is very expensive and time consuming.

The FDA must approve a drug before it can be sold in the United States. The general process for this approval is as follows:

Preclinical Testing

Before we can test a drug candidate in humans, we must study the drug in laboratory experiments and in animals to generate data to support the drug's potential safety and benefits. We submit this data to the FDA in an investigational new drug application (IND) seeking their approval to test the compound in humans.

Clinical Trials

If the FDA accepts the investigational new drug application, we study the drug in human clinical trials to determine if the drug is safe and effective. These clinical trials involve three separate phases that often overlap, can take many years and are very expensive. These three phases, which are themselves subject to considerable regulation, are as follows:

- Phase 1. The drug is given to a small number of healthy human subjects or patients to test for safety, dose tolerance, pharmacokinetics, metabolism, distribution and excretion.
- Phase 2. The drug is given to a limited patient population to determine the effect of the drug in treating the disease, the best dose of the drug, and the possible side effects and safety risks of the drug.
- Phase 3. If a compound appears to be effective and safe in Phase 2 clinical trials, Phase 3 clinical trials are commenced to confirm those results. Phase 3 clinical trials are long-term, involve a significantly larger population, are conducted at numerous sites in different geographic regions and are carefully designed to provide reliable and conclusive data regarding the safety and benefits of a drug. It is not uncommon for a drug that appears promising in Phase 2 clinical trials to fail in the more rigorous and reliable Phase 3 clinical trials.

FDA Approval Process

If we believe that the data from the Phase 3 clinical trials show an adequate level of safety and effectiveness, we will file a new drug application (NDA) with the FDA seeking approval to sell the drug for a particular use. The FDA will review the NDA and often will hold a public hearing where an independent advisory committee of expert advisors asks additional questions regarding the drug. This committee makes a recommendation to the FDA that is not binding on the FDA but is generally followed by the FDA. If the FDA agrees that the compound has met the required level of safety and effectiveness for a particular use, it will allow us to sell the drug in the United States for that use. It is not unusual, however, for the FDA to reject an application because it believes that the drug is not safe enough or effective enough or because it does not believe that the data submitted is reliable or conclusive.

At any point in this process, the development of a drug could be stopped for a number of reasons including safety concerns and lack of treatment benefit. We cannot be certain that any clinical trials that we are currently conducting, or any that we conduct in the future, will be completed successfully or within any specified time period. We may choose, or the FDA may require us, to delay or suspend our clinical trials at any time if it appears that the patients are being exposed to an unacceptable health risk or if the drug candidate does not appear to have sufficient treatment benefit.

The FDA may also require us to complete additional testing, provide additional data or information, improve our manufacturing processes, procedures or facilities or may require extensive post-marketing testing and surveillance to monitor the safety or benefits of our product candidates if it determines that our new drug application does not contain adequate evidence of the safety and benefits of the drug. In

addition, even if the FDA approves a drug, it could limit the uses of the drug. The FDA can withdraw approvals if it does not believe that we are complying with regulatory standards or if problems are uncovered or occur after approval.

In addition to obtaining FDA approval for each drug, we obtain FDA approval of the manufacturing facilities for any drug we sell, including those of companies who manufacture our drugs for us as well as our own and these facilities are subject to periodic inspections by the FDA. The FDA must also approve foreign establishments that manufacture products to be sold in the United States and these facilities are subject to periodic regulatory inspection. Manufacturing facilities located in California, including our San Dimas facility and Foster City facility, also must be licensed by the State of California in compliance with local regulatory requirements.

Drugs that treat serious or life-threatening diseases and conditions that are not adequately addressed by existing drugs may be designated as fast track products by the FDA and may be eligible for accelerated six-month review and accelerated approval, as was the case for Viread and Truvada. Drugs receiving accelerated approval must be monitored in post-marketing clinical trials in order to confirm the safety and benefits of the drug.

We are also subject to other federal, state and local regulations regarding workplace safety and protection of the environment. We use hazardous materials, chemicals, viruses and various radioactive compounds in our research and development activities and cannot eliminate the risk of accidental contamination or injury from these materials. Any misuse or accidents involving these materials could lead to significant litigation, fines and penalties.

Drugs are also subject to extensive regulation outside of the United States. In the European Union, there is a centralized approval procedure that authorizes marketing of a product in all countries in the European Union (which includes most major countries in Europe). If this procedure is not used, under a decentralized system, an approval in one country of the European Union can be used to obtain approval in another country of the European Union under a simplified application process. After approval under the centralized procedure, pricing and reimbursement approvals are also required in most countries. Vistide, Viread, Hepsera, Emtriva and in February 2005, Truvada, were approved by the European Union under the centralized procedure. Viread as an HIV drug was reviewed for accelerated approval in the European Union. Hepsera received a traditional review, as did Emtriva. In March 2004, we applied for marketing applications of Truvada for the treatment of HIV in the European Union and we began our European launch of Truvada following regulatory approval received in February 2005.

Pricing and Reimbursement

Insurance companies, health maintenance organizations (HMOs), other third-party payors and federal and state governments seek to limit the amount we can charge for our drugs. For example, in certain foreign markets, pricing negotiations are often required to obtain approval of a product, and in the United States there have been, and we expect that there will continue to be, a number of federal and state proposals to implement drug price control. In addition, managed care organizations are becoming more common in the United States and will continue to seek lower drug prices. The announcement of these proposals or efforts can cause our stock price to decrease, and if these proposals are adopted, our revenues could decrease.

Our ability to sell our drugs also depends on the availability of reimbursement from governments and private insurance companies. Governments and insurance companies often demand rebates or predetermined discounts from list prices. We expect that products we are developing, particularly for HIV/AIDS indications, will be subject to reimbursement issues. We cannot be certain that any of our products that obtain regulatory approval will be reimbursed by governments or insurance companies.

Regulatory approval of prices is required in most foreign countries. Certain countries will condition their approval of a product on the agreement of the seller not to sell that product for more than a certain price in that country and in the past have required price reductions after or in connection with product approval. Certain foreign countries also require that the price of an approved product be reduced after that product has been marketed for a period of time. We cannot be certain that regulatory authorities in the future will not establish lower prices or that any regulatory action reducing the price of our products in any one country will not have the practical effect of requiring us to reduce our prices in other countries. Some European governments, notably Germany and Italy, have implemented, or are considering, legislation that would require pharmaceutical companies to sell their products subject to reimbursement at a mandatory discount. Such mandatory discounts would reduce the revenue we receive from our drug sales. In certain developing countries that are significantly affected by HIV and AIDS, parallel importing and generic competition may occur and adversely affect revenues from sales of or market share of Viread. In addition, governments could take regulatory action to disallow the pricing of combination products such as Truvada to be the sum of the prices of the component drugs being marketed in a particular country.

Employees

As of February 28, 2005, we had approximately 1,654 full-time employees. We believe that we have good relations with our employees.

Website

Our website address is *www.gilead.com* . We make available free of charge through our website, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, our directors' and officers' Section 16 reports, other required SEC filings and all amendments to these reports as soon as reasonably practicable after filing, by providing a hyperlink to the EDGAR website containing our reports.

RISK FACTORS THAT AFFECT GILEAD

In evaluating our business, you should carefully consider the following risks in addition to the other information in this report. Any of the following risks could materially and adversely affect our business, operating results and financial condition.

Substantially all of our revenues are derived from sales of a limited number of products. If we are unable to maintain or continue growing sales of our HIV products or to maintain sales of AmBisome, our results of operations may be adversely affected.

We are currently dependent on sales of our HIV products, especially Viread, and AmBisome, to support our existing operations. Although Viread comprised 86% of HIV product sales in 2004, it is important to consider Viread, Emtriva and Truvada collectively as future sales of these three products are intimately tied to one another. Together sales of HIV products and AmBisome accounted for approximately 90% of our total product revenues for the year ended December 31, 2004. If we are unable to continue growing our HIV product revenues or maintain AmBisome sales, our results of operations are likely to suffer and we may need to scale back our operations. HIV product sales for the year ended December 31, 2004 were $908.4 million, or 69% of our total revenues and AmBisome product sales and royalties for the year ended December 31, 2004 were $224.7 million, or 17% of our total revenues. We may not be able to continue the growth rate of sales of our HIV products or the current sales level of AmBisome for the reasons stated in this risk factor section and, in particular, the following reasons:

- We face significant competition from businesses that have substantially greater resources than we do, such as Merck and Pfizer, which released new products that compete with AmBisome, and GlaxoSmithKline which markets fixed-dose combination products which compete with Truvada. Our competitors have more products and have operated in the fields we compete in for longer than we have. AmBisome sales volumes in 2004 were relatively flat when compared to 2003.

- As our HIV products and AmBisome are used over a longer period of time in many patients and in combination with other products, and additional studies are conducted, new issues with respect to safety, resistance and interactions with other drugs may arise which could cause us to provide additional warnings on our labels, narrow our approved indications or halt sales of a product, each of which could reduce our revenues.
- As a product matures, private insurers and government reimbursers often reduce the amount they will reimburse patients for these products, which increases pressure on us to reduce prices.
- A large part of the market for our HIV products are patients who are already taking other HIV drugs. If we are not successful in encouraging physicians to change patients' prescriptions to our HIV products, the sales of our HIV products will be limited.
- As generic HIV products are introduced into the major markets, our ability to maintain pricing may be affected.

If we fail to commercialize new products or expand the indications for existing products, our prospects for future revenues and our stock price may be adversely affected.

If we do not introduce new products or increase revenues from our existing products, we will not be able to grow our revenues. If we fail to increase our sales of our HIV products, we may not be able to increase revenues and expand our research and development efforts. We may not be successful in our efforts in collaboration with Bristol Myers Squibb Company to formulate a once-a-day one pill combination of Truvada and Sustiva. Failure to achieve any of these objectives when expected, or at all, may have a material adverse effect on our business and results of operations.

If significant safety issues arise for our marketed products, our sales may decline, which would adversely affect our results of operations.

The data that support the marketing approvals for our products and that form the basis for the safety warnings in our product labels were obtained in controlled clinical trials of limited duration, and, in some cases, from limited post-approval use. While both components of Truvada (Emtriva and Viread) have been studied individually, safety and efficacy studies of Truvada are still ongoing. Following approval, our products are used over longer periods of time by many patients taking numerous other medicines, many of whom have underlying health problems and would not be monitored for dosing compliance. As drugs are used over longer periods of time by more patients, we have found and expect to continue to find new issues such as safety, resistance or drug interaction issues, which may require us to provide additional warnings on our labels or narrow our approved indications, each of which could reduce the market acceptance of these products. If serious safety, resistance or interaction issues arise with our marketed products, sales of these products could be limited or halted by us or by regulatory authorities.

Our operations depend on compliance with complex FDA and comparable international regulations. Failure to obtain broad approvals on a timely basis or to achieve continued compliance could delay or halt commercialization of our products.

The products that we develop must be approved for marketing and sale by regulatory authorities and, once approved, are subject to extensive regulation by the FDA and comparable regulatory agencies in other countries. We are continuing clinical trials for AmBisome, Viread, Hepsera, Emtriva and Truvada for currently approved and additional uses. We anticipate that we will file for marketing approval in additional countries and for additional products over the next several years. These products may fail to receive marketing approval on a timely basis, or at all.

In addition, our marketed products and how we manufacture and sell these products are subject to extensive continued regulation and review. Discovery of previously unknown problems with our marketed products or problems with our manufacturing or promotional activities may result in restrictions on our

products, including withdrawal of the products from the market. If we fail to comply with applicable regulatory requirements, we could be subject to penalties including fines, suspensions of regulatory approvals, product recalls, seizure of products and criminal prosecution.

Recently, the formation of an independent drug safety office was announced which is tasked with monitoring the safety of approved products. This new office may increase the difficulty and length of time required for new drugs to obtain marketing approval and the office may create more post-approval obligations with which we would be required to comply.

Results of clinical trials are uncertain and may not support continued development of a product pipeline, which would adversely affect our prospects for future revenue growth.

We are required to demonstrate the safety and effectiveness of products we develop in each intended use through extensive preclinical studies and clinical trials. The results from preclinical and early clinical studies do not always accurately predict results in later, large-scale clinical trials. Even successfully completed large-scale clinical trials may not result in marketable products. If any of our products under development fail to achieve their primary endpoint in clinical trials or if safety issues arise, commercialization of that drug candidate could be delayed or halted. In addition, clinical trials involving our commercial products could raise new safety issues for our existing products and reduce our revenues.

Manufacturing problems could delay product shipments and regulatory approvals, which may adversely affect our results of operations.

We depend on third parties to perform manufacturing activities effectively and on a timely basis. If these third parties fail to perform as required, this could impair our ability to deliver our products on a timely basis or cause delays in our clinical trials and applications for regulatory approval, and these events could harm our competitive position. The manufacturing process for pharmaceutical products is highly regulated, and regulators may shut down manufacturing facilities that they believe do not comply with regulations. We and our manufacturers are subject to t he FDA's current Good Manufacturing Practices, which are extensive regulations governing manufacturing processes, stability testing, record-keeping and quality standards and similar regulations are in effect in other countries. In addition, our manufacturing operations are subject to routine inspections by regulatory agencies.

For Viread, Hepsera, Vistide, Emtriva and Truvada, we rely on third parties for the manufacture of bulk drug substance and final drug product for clinical and commercial purposes. In addition, Roche is responsible for manufacturing Tamiflu. These third-party manufacturers may develop problems over which we have no control and these problems may adversely affect our business. For example, in January 2002, Roche announced that due to production problems the liquid suspension form of Tamiflu approved for treatment of children as young as one year old was not available. In Japan, where the 2002-2003 flu season was particularly severe, Roche's sublicensee, Chugai Corporation, was unable to meet heightened demand satisfactorily. In January 2003, Chugai issued a press release attributing this failure, in part, to manufacturing problems. These problems in Japan reduced the net sales of Tamiflu and our royalty from Roche in 2002 and 2003.

We manufacture AmBisome at our facilities in San Dimas, California. These are our only formulation and manufacturing facilities in the United States. We own a manufacturing facility in Ireland that conducts quality control testing, labeling and packaging. In addition, we use third parties as alternate contract suppliers to fill and freeze dry certain batches of product. In the event of a natural disaster, including an earthquake, equipment failure, strike or other difficulty, we may be unable to replace this manufacturing capacity in a timely manner and would be unable to manufacture AmBisome to meet market needs.

We may not be able to obtain materials necessary to manufacture our products, which could limit our ability to generate revenues.

Many of the materials that we utilize in our operations are made at only one facility. For example, we depend on single suppliers for high quality amphotericin B, distearoylphosphatidylcholine and high quality cholesterol, each of which is used in the manufacture of one or more of our liposomal products. Because the suppliers of key components and materials must be named in the new drug application filed with the FDA for a product, significant delays can occur if the qualification of a new supplier is required. If delivery of material from our suppliers were interrupted for any reason, we may be unable to ship Viread, AmBisome, Hepsera, Emtriva, Truvada or Vistide, or to supply any of our products in development for clinical trials.

We depend on relationships with other companies for sales and marketing performance and revenues. Failure to maintain these relationships would negatively impact our business.

We rely on a number of significant collaborative relationships with major pharmaceutical companies for our sales and marketing performance. These include collaborations with Fujisawa and Sumitomo for AmBisome, GSK for Hepsera, Roche for Tamiflu, Pfizer for Vistide, Japan Tobacco for Viread, Emtriva and Truvada and our recently announced joint venture with Bristol-Myers Squibb to develop and commercialize a fixed-dose combination of Truvada and Sustiva. In certain countries, we rely on international distributors for sales of AmBisome, Viread and Emtriva and in some European countries, we intend to rely only on international distributors for sales of Hepsera. Some of these relationships also involve the clinical development of these products by our partners. Reliance on collaborative relationships poses a number of risks, including:

- we are not able to control whether our corporate partners devote sufficient resources to our programs or products;
- disputes may arise in the future with respect to the ownership of rights to technology developed with corporate partners;
- disagreements with corporate partners could lead to delays, in or termination of, the research, development or commercialization of product candidates, or result in litigation or arbitration;
- contracts with our corporate partners may fail to provide significant protection or may fail to be effectively enforced if one of these partners fails to perform;
- corporate partners have considerable discretion in electing whether to pursue the development of any additional products and may pursue alternative technologies or products either on their own or in collaboration with our competitors;
- corporate partners with marketing rights may choose to devote fewer resources to the marketing of our products than they do to products of their own development; and
- our distributors and corporate partners may be unable to pay us.

Given these risks, there is a great deal of uncertainty regarding the success of our current and future collaborative efforts. If these efforts fail, our product development or commercialization of new products could be delayed or revenue from existing products could decline.

Under our April 2002 licensing agreement with GSK, we gave GSK the right to control clinical and regulatory development and commercialization of Hepsera in territories in Asia, Africa and Latin America. These include major markets for Hepsera, such as China, Japan, Taiwan and Korea. The success of Hepsera in these territories will depend almost entirely on the efforts of GSK. In this regard, GSK promotes Epivir—HBV, a product that competes with Hepsera. Consequently, GSK's marketing strategy for Hepsera may be influenced by its promotion of Epivir—HBV. We receive royalties from GSK equal to

a percentage of GSK's net sales of Hepsera as well as net sales of GSK's Epivir—HBV. If GSK fails to devote sufficient resources to, or does not succeed in developing or commercializing Hepsera in its territories, our potential revenues from sales of Hepsera may be substantially reduced.

Expenses associated with clinical trials and sales fluctuations as a result of inventory levels held by wholesalers may cause our earnings to fluctuate, which could adversely affect our stock price.

The clinical trials required for regulatory approval of our products, as well as clinical trials we are required to conduct after approval, are extremely expensive. It is difficult to accurately predict or control the amount or timing of these expenses. Uneven and unexpected spending on these programs may cause our operating results to fluctuate from quarter to quarter. In addition, approximately 81% of our product sales in the United States are to three distributors, AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. Inventory levels held by these and other wholesalers may fluctuate significantly which could cause our sales to them and as a result, our operating results, to fluctuate unexpectedly from quarter to quarter. For example, based on our review of NDC Health Corp. prescription trends, IMS Health Inc. inventory data and actual Viread sales, we believe that in the quarter ended June 30, 2003, wholesalers built up inventory levels by an estimated 1.2 months. We believe this inventory build-up was followed by an equivalent or possibly greater inventory reduction during the quarter ended September 30, 2003. We do not know if the inventory management agreements we entered into this year with our three major U.S. wholesalers will continue to be effective in matching inventory levels to end user demand, as we rely on the wholesalers to estimate end user demand.

Approximately half of our product sales occur outside the United States, and currency fluctuations may cause our earnings to fluctuate, which could adversely affect our stock price.

A significant percentage of our product sales are denominated in foreign currencies. Increases in the value of the U.S. dollar against these foreign currencies in the past have reduced, and in the future may reduce, our U.S. dollar equivalent sales and negatively impact our financial condition and results of operations. We use foreign currency forward contracts to hedge a percentage of our forecasted international sales, primarily those denominated in the Euro currency. We also hedge a portion of our accounts receivable balances denominated in foreign currencies, which reduces but does not eliminate our exposure to currency fluctuations between the date a sale is recorded and the date that cash is collected. Additionally, to mitigate the impact of currency rate fluctuations on our cash outflows for certain foreign currency-denominated raw materials purchases, we enter into foreign exchange forward contracts to hedge our foreign currency-denominated accounts payable. Although we use forward contracts to reduce the impact of foreign currency fluctuations on our future results, these efforts may not be successful and any such fluctuations could adversely affect our results of operations.

We face credit risks from our European customers that may adversely affect our results of operations.

We are particularly subject to credit risk from our European customers. Our European product sales to government owned or supported customers in Greece, Italy, Portugal and Spain are subject to significant payment delays due to government funding and reimbursement practices. Our accounts receivable from government owned or supported customers in these countries totaled $231.9 million as of December 31, 2004. If significant changes were to occur in the reimbursement practices of European governments or if government funding becomes unavailable, we may not be able to collect on amounts due to us from these customers and our results of operations would be adversely affected.

Our plan to supply Viread and Truvada at our cost to certain developing countries may expose us to liability that would have a material adverse affect on our results of operations and financial condition.

We have launched a distribution program pursuant to which we will supply Viread and Truvada at our cost to all countries in Africa and to the fifteen other countries designated "Least Developed" by the United Nations. The supply and distribution of drugs in a resource-poor environment is a complicated

undertaking. As this program develops, we could face unforeseen challenges and risks, which could give rise to unforeseen liabilities. For example, patients in less developed countries using Viread and Truvada may not be as closely supervised by a doctor as they would be in more developed nations. Accordingly, there may be an increased likelihood of Viread- or Truvada-related complications going undetected or untreated, which could result in significant liability to Gilead.

Our product revenues could be reduced by imports from countries where our products are available at lower prices.

Prices for our products are based on local market economics and competition and sometimes differ from country to country. Our sales in countries with relatively higher prices may be reduced if products can be imported into those countries from lower price markets. There have been cases in which pharmaceutical products were sold at steeply discounted prices in the developing world and then re-exported to European countries where they could be re-sold at much higher prices. If this happens with our products, particularly Viread and Truvada, which we have agreed to provide at our cost to all countries in Africa and to the fifteen other countries designated "Least Developed Countries" by the United Nations, our revenues would be adversely affected.

In addition, in the European Union, we are required to permit cross border sales. This allows buyers in countries where government-approved prices for our products are relatively high to purchase our products legally from countries where they must be sold at lower prices. Additionally, some U.S. consumers have been able to purchase products, including HIV medicines, from Internet pharmacies in other countries at substantial discounts. Such cross-border sales could adversely affect our revenues.

In some countries, we may be required to grant compulsory licenses for our HIV products or face generic competition for our HIV products.

In a number of developing countries, government officials and other groups have suggested that pharmaceutical companies should make drugs for HIV infection available at a low cost. Alternatively, governments in those countries could require that we grant compulsory licenses to allow competitors to manufacture and sell their own versions of our products, thereby reducing our sales. Certain countries do not permit enforcement of our patents, and manufacturers are able to sell generic versions of our products in those countries. Compulsory licenses or sales of generic versions of our products could significantly reduce our sales and adversely affect our results of operations.

Our existing products are subject to reimbursement from government agencies and other third parties. Pharmaceutical pricing and reimbursement pressures may reduce profitability.

Successful commercialization of our products depends, in part, on the availability of governmental and third party payor reimbursement for the cost of such products and related treatments. Government health administration authorities, private health insurers and other organizations generally provide reimbursement. Government authorities and third-party payors increasingly are challenging the price of medical products and services, particularly for innovative new products and therapies. This has resulted in lower average sales prices. For example, a majority of our sales of AmBisome and Vistide, and a significant percentage of our sales of Viread and Hepsera, are subject to reimbursement by government agencies, resulting in significant discounts from list price and rebate obligations. Our business may be adversely affected by an increase in U.S. or international pricing pressures. These pressures can arise from rules and practices of managed care groups, judicial decisions and governmental laws and regulations related to Medicare, Medicaid and health care reform, pharmaceutical reimbursement policies and pricing in general.

In Europe, the success of Hepsera, Tamiflu, Emtriva, Viread and Truvada will also depend largely on obtaining and maintaining government reimbursement because in many European countries, including the United Kingdom and France, patients will not use prescription drugs that are not reimbursed by their

governments. In addition, negotiating prices with governmental authorities can delay commercialization by twelve months or more. We also expect that the success of our products in development, particularly in Europe, will depend on the ability to obtain reimbursement. Even if reimbursement is available, reimbursement policies may adversely affect our ability to sell our products on a profitable basis. For example, in Europe as in many international markets, governments control the prices of prescription pharmaceuticals and expect prices of prescription pharmaceuticals to decline over the life of the product or as volumes increase. In 2004, as well as in previous years, we have seen significant price decreases for our products across much of Europe. We believe that this will continue into the foreseeable future as governments struggle with escalating health care spending. As a result of these pricing practices, it may become difficult to maintain our historic levels of profitability or to achieve expected rates of growth.

Our results of operations could be adversely affected by future health care reforms.

In the United States in recent years, new legislation has been proposed at the federal and state levels that would effect major changes in the health care system, either nationally or at the state level. These proposals have included prescription drug benefit proposals for Medicare beneficiaries recently passed by Congress. Additionally, some states have enacted health care reform legislation. Further federal and state developments are possible. The impact of proposed legislation and other reforms is unclear, but it may result in pricing and reimbursement restrictions, which could adversely impact our revenues.

We may not be able to obtain effective patents to protect our technologies from use by competitors and patents of other companies could require us to stop using or pay for the use of required technology.

Our success will depend to a significant degree on our ability to:

- obtain patents and licenses to patent rights;
- preserve trade secrets; and
- operate without infringing on the proprietary rights of others.

We have a number of U.S. and foreign patents, patent applications and rights to patents related to our compounds, products and technology. There is a risk, however, that issued patents will not be enforceable or provide adequate protection or that pending patent applications will not result in issued patents. Patent applications are confidential for at least some period of time, sometimes in the United States until a patent issues. As a result, we may not know if our competitors filed patent applications for technology covered by our pending applications or if we were the first to invent the technology that is the subject of our patent applications. Competitors may have filed patent applications or received patents and may obtain additional patents and proprietary rights that block or compete with our patents.

We do not have patent filings in China or certain other Asian countries covering all forms of adefovir dipivoxil, the active ingredient in Hepsera. Asia is a major market for therapies for HBV, the indication for which Hepsera has been developed. We may obtain patents for certain products many years before marketing approval is obtained for those products.

Because patents have a limited life, which may begin to run prior to the commercial sale of the related product, the commercial value of the patent may be limited. However, we may be able to apply for patent term extensions. In addition, patents may not provide adequate protection in certain countries in Africa and Asia, including China.

Our competitors may file patent applications covering our technology. If so, we may have to participate in interference proceedings or litigation to determine the right to a patent. Litigation and interference proceedings are expensive even if we are ultimately successful.

As part of the approval process of some of our products, the FDA has determined that the products would be granted an exclusivity period during which other manufacturers' applications for approval of

generic versions of our product will not be granted. Generic manufactures often wait to challenge the patents protecting products that have been granted exclusivity until one year prior to the end of the exclusivity period. As we near the end of exclusivity periods granted to our products, our patents may be subject to challenges for which we may need to spend significant resources to defend and we may not be able to defend our patents successfully.

Our success depends in large part on our ability to operate without infringing upon the patents or other proprietary rights of third parties. If we infringe the patents of others, we may be prevented from commercializing products or may be required to obtain licenses from these third parties. We may not be able to obtain alternative technologies or any required license on reasonable terms or at all. If we fail to obtain such licenses or alternative technologies, we may be unable to develop or commercialize some or all of our products.

In addition, we use significant proprietary technology and rely on unpatented trade secrets and proprietary know-how to protect certain aspects of our production and other technologies. Our trade secrets may become known or independently discovered by our competitors.

We may face significant liability resulting from our products that may not be covered by insurance and successful claims could materially reduce our earnings.

The testing, manufacturing, marketing and use of our commercial products, as well as products in development, involve substantial risk of product liability claims. These claims may be made directly by consumers, healthcare providers, pharmaceutical companies or others. Although we maintain product liability insurance, a successful product liability claim against us may not be covered by our insurance or could require us to pay amounts beyond that provided by our insurance, either of which could impair our financial condition and our ability to clinically test and to market our products.

Expensive litigation may reduce our earnings.

We are named as a defendant in a number of lawsuits regarding use of average wholesale price and reimbursement rates under Medicaid. We have also been named in lawsuits alleging violations of the federal securities laws. Adverse results from these lawsuits could result in material damages which could significantly reduce our earnings or cash flows.

Changes in our effective income tax rate could reduce our earnings.

Various factors may have favorable or unfavorable effects on our effective income tax rate. These factors include, but are not limited to, interpretations of existing tax laws, changes in tax laws and rates, future levels of research and development spending, changes in accounting rules, future levels of capital expenditures, changes in the mix of earnings in the various tax jurisdictions in which we operate and changes in overall levels of pre-tax earnings. The impact on our income tax provision resulting from the above-mentioned factors may be significant and could have a negative impact on our results of operations.

Recently adopted changes in accounting for stock options may affect our earnings.

The Financial Accounting Standards Board (FASB) recently issued Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (SFAS 123R), which is required to be implemented by the third quarter of 2005, provides new guidance on the accounting for stock options. Under the new accounting guidance, we will be required to record additional compensation expense related to stock options and other equity incentives. Although we are currently evaluating various option valuation methodologies including the Black-Scholes method, binomial method or other methods allowed under FAS 123R, the impact on our earnings resulting from this new standard will be significant and may have a negative impact on our results of operations.

ITEM 2. PROPERTIES

Our corporate headquarters, including our principal executive offices and some of our research facilities, are located in Foster City, California. At this location, we own approximately 496,000 square feet of space in 16 proximately located buildings. We currently occupy 10 of the 16 buildings and also have a tenant occupying some of the remaining buildings. In addition, we lease two office buildings with approximately 141,000 square feet of space to house commercial and clinical development activities. The leases for the two buildings expire in June 2009 and 2010, respectively, after which Gilead has the option to renew for two five-year terms. In addition, from June 2004 to May 2007, Gilead has the option to purchase the two buildings at specified amounts.

We also occupy facilities in San Dimas, California. At this location, we lease approximately 102,500 square feet of space, which houses research and development activities, manufacturing and certain administrative functions. These leases expire in November 2013, with no renewal options at present. In addition, we lease an adjacent warehouse facility with about 53,000 square feet of space that we use for product distribution and administrative functions. This lease expires in November 2013, with no renewal options.

In Durham, North Carolina, we lease approximately 101,000 square feet of administrative office and laboratory space, of which we sublease approximately 21,000 square feet to third parties. This lease expires in October 2009, after which Gilead has the option to renew the lease for two seven-year terms.

In addition, we lease approximately 141,000 square feet of space (in the aggregate) for our sales and marketing, regulatory, finance, information technology and human resource operations in Europe and Australia, including a prepaid, 999-year lease for our 13,000 square foot manufacturing and distribution facility in Ireland. The other leases have various expiration dates.

We believe that our facilities are adequate and suitable for at least our current and near-term future needs.

ITEM 3. LEGAL PROCEEDINGS

The complaints in each of the following cases allege that a large number of defendants, including Gilead, overcharged the governmental entity named as the plaintiff for pharmaceutical products furnished to participants in the Medicaid program. In general, the complaints assert claims under federal and state law, except for the Alabama state action, which includes only state law claims, and seek treble damage and attorneys' fees. The litigations are all at a preliminary stage and it is not possible to predict the outcome. Indeed, to date Gilead has not been served with process in any of these cases except *County of Westchester v. Abbott Laboratories, et al.* We intend to defend these cases vigorously. As the outcome of these cases cannot be predicted at this time, no amounts have been accrued.

(1) *County of Westchester v. Abbott Laboratories, et al.,* now pending as part of multi-district litigation in the United States District Court for the District of Massachusetts. This lawsuit was filed against Gilead and approximately 40 other defendants on August 14, 2003. It was amended to include approximately 80 defendants on January 26, 2005.

(2) *City of New York v. Abbott Laboratories et al.,* pending as part of multi-district litigation in the United States District Court for the District of Massachusetts. This lawsuit was filed against Gilead and approximately 43 other defendants on August 4, 2004. It was amended to approximately 73 defendants on January 26, 2005.

(3) *County of Rockland v. Abbott Laboratories, et al.,* pending as part of multi-district litigation in the United States District Court for the District of Massachusetts. This lawsuit did not originally name

Gilead as a defendant, but was amended to include claims against Gilead as well as approximately 77 other defendants on January 26, 2005.

(4) *State of Alabama v. Abbott Laboratories et al.,* pending in the Circuit Court of Montgomery County, Alabama. This lawsuit was filed against Gilead and approximately 77 other defendants on January 26, 2005.

A purported class action complaint was filed on November 10, 2003 in the United States District Court for the Northern District of California against Gilead and certain of our executive officers . The complaint alleges that the defendants violated federal securities laws, specifically Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission, by making certain allegedly false and misleading statements and omissions. The plaintiff seeks unspecified damages on behalf of a purported class of purchasers of Gilead's securities during the period from July 14, 2003 through October 28, 2003. Other similar actions were subsequently filed and the court issued an order consolidating the lawsuits into a single action on December 22, 2003. On February 9, 2004, the court issued an order appointing lead plaintiffs in the consolidated action. On April 30, 2004, lead plaintiffs, on behalf of the purported class, filed their consolidated amended complaint. On June 21, 2004, Gilead and individual defendants filed their motion to dismiss the consolidated amended complaint. On January 25, 2005, the Court granted defendants' motion to dismiss with leave to amend.

In December 2003, two purported shareholder derivative lawsuits were filed by individual shareholders on behalf of Gilead against its directors and certain executive officers in the Superior Court of the State of California, County of San Mateo alleging, among other things, that defendants violated the California Corporations Code and breached fiduciary duties to Gilead. Gilead is named as a nominal defendant. The plaintiffs seek unspecified damages on behalf of Gilead in connection with alleged insider trading during the period between July 14, 2003 and October 28, 2003 and defendants' alleged breach of their fiduciary duties, abuse of control, waste and mismanagement. The two cases were consolidated into a single action on January 15, 2004. A third, similar case was filed on February 4, 2004 and later consolidated with the prior two cases. Plaintiffs have filed a consolidated complaint, which was amended two times, most recently on November 22, 2004. Gilead demurred to each consolidated complaint, and the court granted each demurrer. On December 14, 2004, plaintiffs filed a motion for leave to file a third consolidated amended complaint and on January 7, 2005, the Court granted the plaintiff's motion, rendering that complaint the operative complaint. We intend to demur to this complaint. A trial is scheduled for June 13, 2005.

We are also a party to various other legal actions that arose in the ordinary course of our business. We do not believe that any of these other legal actions will have a material adverse impact on our business, results of operations or financial position.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of securities holders during the quarter ended December 31, 2004.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock is traded on The Nasdaq Stock Market under the symbol "GILD". The following table sets forth for the periods indicated the high and low intra-day sale prices per share of our common stock on The Nasdaq Stock Market. These prices represent quotations among dealers without adjustments for retail mark-ups, markdowns or commissions, and may not represent prices of actual transactions.

	High	Low
2004		
First Quarter	$ 33.25	$ 25.75
Second Quarter	$ 33.90	$ 27.08
Third Quarter	$ 37.48	$ 27.79
Fourth Quarter	$ 39.10	$ 32.07
2003		
First Quarter	$ 21.60	$ 15.62
Second Quarter	$ 28.69	$ 20.29
Third Quarter	$ 35.31	$ 26.69
Fourth Quarter	$ 30.83	$ 25.14

On September 3, 2004, we implemented a two-for-one stock split in the form of stock dividends. All share and per share amounts for all periods presented have been restated to reflect this stock split.

As of February 28, 2005, we had 449,881,860 shares of common stock outstanding held by approximately 477 stockholders of record. We have not paid cash dividends on our common stock since our inception and we do not anticipate paying any in the foreseeable future.

ITEM 6. SELECTED FINANCIAL DATA

GILEAD SCIENCES, INC.

SELECTED CONSOLIDATED FINANCIAL DATA

(in thousands, except per share data)

	Year ended December 31,				
	2004	**2003**	**2002**	**2001**	**2000**
CONSOLIDATED STATEMENT OF OPERATIONS DATA:					
Total revenues	$ 1,324,621	$ 867,864	$ 466,790	$ 233,769	$ 195,555
Purchased in-process research and development (1)	—	488,599	—	—	—
Total costs and expenses	692,932	1,026,539	385,783	354,458	247,873
Income (loss) from operations	631,689	(158,675)	81,007	(120,689)	(52,318)
Gain on sale of oncology assets(1)	—	—	—	157,771	—
Provision for (benefit from) income taxes(1)	207,051	(95,530)	1,300	4,135	1,199
Income (loss) before cumulative effect of change in accounting principle	449,371	(72,003)	72,097	51,182	(43,106)
Cumulative effect of change in accounting principle(2)	—	—	—	1,089	(13,670)
Net income (loss)	449,371	(72,003)	72,097	52,271	(56,776)
Amounts per common share—basic:					
Income (loss) before cumulative effect of change in accounting principle(3)	$ 1.04	$ (0.18)	$ 0.18	$ 0.14	$ (0.12)
Cumulative effect of change in accounting principle(3)	—	—	—	—	(0.04)
Net income (loss) per share—basic(3)	$ 1.04	$ (0.18)	$ 0.18	$ 0.14	$ (0.16)
Shares used in per share calculation—basic(3)	432,000	402,210	391,086	380,490	364,198
Amounts per common share—diluted:					
Income (loss) before cumulative effect of change in accounting principle(3)	$ 0.99	$ (0.18)	$ 0.17	$ 0.13	$ (0.12)
Cumulative effect of change in accounting principle(3)	—	—	—	—	(0.04)
Net income (loss) per share—diluted(3)	$ 0.99	$ (0.18)	$ 0.17	$ 0.13	$ (0.16)
Shares used in per share calculation—diluted(3)	464,246	402,210	412,954	404,642	364,198

	December 31,				
	2004	2003	2002	2001	2000
CONSOLIDATED BALANCE SHEET DATA:					
Cash, cash equivalents and marketable securities	$ 1,254,038	$ 707,000	$ 942,374	$ 582,851	$ 512,878
Working capital	1,596,241	1,080,003	1,078,868	627,642	535,560
Total assets	2,155,963	1,554,722	1,288,183	794,786	678,099
Long-term obligations	234	323	273	389	2,238
Convertible debt	—	345,000	595,000	250,000	250,000
Accumulated deficit	(4,272)	(453,643)	(381,640)	(453,737)	(506,008)
Total stockholders' equity(4)	1,870,872	1,002,974	571,341	452,437	351,124

(1) During 2004, Gilead recorded a gain of $20.6 million related to our warrants in Eyetech which completed its initial public offering. Also in 2004, we recorded a make-whole payment of $7.4 million related to the redemption of our $345.0 million 2% convertible senior debt. During 2003, Gilead completed the acquisition of all of the net assets of Triangle for an aggregate purchase price of $525.2 million. Approximately $488.6 million of the purchase price was allocated to purchased in-process research and development. Also during 2003, we recorded an income tax benefit of $111.6 million related to the reduction of the valuation allowance on certain of our net deferred tax assets. During 2002, we sold all of our shares of OSI common stock and recognized a loss on the sale of marketable securities of $16.0 million. These shares were partial consideration for the sale of our oncology assets in 2001. During 2001, we completed the sale of our oncology assets and related technology to OSI Pharmaceuticals, Inc. and recorded a non-operating gain of $157.8 million. In 2001, we also recorded a non-operating gain of $8.8 million from the sale of our 49 percent interest in Proligo.

(2) Gilead adopted Statement of Financial Accounting Standards Nos. 133 and 138, collectively referred to as SFAS 133, *Accounting for Derivative Instruments and Hedging Activities* , in the first quarter of 2001. The change was accounted for as a change in accounting principle. Effective in the first quarter of 2000, Gilead adopted the SEC's Staff Accounting Bulletin No. 101 (SAB 101), *Revenue Recognition in Financial Statements* , and the change was also accounted for as a change in accounting principle.

(3) On February 22, 2001, March 8, 2002 and September 3, 2004, Gilead implemented two-for-one stock splits in the form of a stock dividend. All share and per share amounts for all periods presented have been restated to reflect these stock splits.

(4) No cash dividends have been declared or paid on our common stock.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Executive Summary

Our operating results for 2004 marked another year of growth with total revenues reaching $1.32 billion and higher ending cash, cash equivalents and marketable securities of $1.25 billion, driven in large part by operating cash flows of $511.4 million for the year. Although several factors contributed to our improved financial performance over 2003, two important drivers were the continued growth experienced by our HIV products portfolio (which is comprised of Viread, Emtriva and Truvada), as well as the maintenance of AmBisome revenues amidst increasing competition. Given increased international sales and a favorable foreign currency environment in Europe, Viread sales increased 38% year over year and comprised 63% of 2004 total product sales. In August 2004, we launched Truvada, which is the co-formulation of Viread and Emtriva, in the United States. We began launching Truvada in the European Union following regulatory approval in February 2005. Over time, depending on the treatment regimens prescribed by physicians, we expect to see Truvada sales partially replace product sales of Viread and Emtriva. To further increase our future sales of HIV products, we entered into a joint venture collaboration agreement with BMS in December 2004 to develop and commercialize the fixed-dose combination of Gilead's Truvada and BMS' Sustiva in the United States. Understanding the importance of having a clear view of our wholesalers' channel inventory, we signed inventory management agreements with our three major U.S. wholesalers in 2004. In keeping with our strategy of active product acquisition and in-licensing, we rounded out 2004 by entering into collaboration agreements in the area of HCV.

Our operating results for 2003 were impacted by the acquisition of all of the assets of Triangle i n January 2003. We completed this acquisition to expand our antiviral pipeline. Triangle was a development stage company with a particular focus on potential therapies for HIV, including AIDS, and HBV. The aggregate purchase price was $525.2 million and included cash paid of $463.1 million, the fair value of stock options assumed of $41.3 million, direct transaction costs of $14.2 million and employee related costs of $6.6 million. Approximately $488.6 million of the consideration paid was allocated to purchased in-process research and development and represented the fair value of Triangle's incomplete research and development programs that had not yet reached technological feasibility and had no alternative future use as of the acquisition date. As a result of this transaction and the related purchased in-process research and development charge, our operating loss for 2003 was $158.7 million. This acquisition was important to us not only for the compounds we acquired, but also for the opportunity it provided us to create Truvada, our co-formulation of Viread and Emtriva, into a single pill that can be dosed once a day. See Note 3 to the consolidated financial statements for further information on the Triangle acquisition.

On September 3, 2004, Gilead completed a two-for-one stock split, effected in the form of a stock dividend, to stockholders of record as of August 12, 2004. Accordingly, all share and per share amounts for all periods presented have been restated to reflect this stock split. In addition, certain prior year amounts have also been reclassified to conform to the current year presentation.

Management's discussion and analysis should be read in conjunction with the consolidated financial statements and notes included elsewhere in this report.

Forward-Looking Statements and Risk Factors

The following discussion contains forward-looking statements that involve risks and uncertainties. The "Risk Factors" discussion should be read in conjunction with the consolidated financial statements and notes included elsewhere in this report.

Critical Accounting Policies, Estimates and Judgments

This discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures. On an on-going basis, we evaluate our estimates, including those related to revenue recognition, allowance for doubtful accounts, inventories, clinical trial accruals and our tax provision. We base our estimates on historical experience and on various other market-specific assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results, however, may differ significantly from these estimates.

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

Revenue Recognition

We recognize revenue from product sales when there is persuasive evidence an arrangement exists, delivery to the customer has occurred, the price is fixed or determinable and collectibility is reasonably assured. We record estimated reductions to revenue for expected returns of expired products, distributor fees, government rebate programs, such as Medicaid reimbursements and customer incentives, such as cash discounts for prompt payment. Estimates for distributor fees are based on contractually determined fixed percentages of sales. Estimates for government rebate programs and cash discounts are based on contractual terms, historical utilization rates and expectations regarding future utilization rates for these programs. Estimates for product returns, including new products, are based on an on-going analysis of industry and historical return patterns. This includes monitoring the feedback that we receive from our sales force regarding customer use and satisfaction, reviewing inventory data available to us through our U.S. wholesaler inventory management agreements to assist us in monitoring channel inventory levels, the purchase of third-party data to monitor prescriptions as well as, for new products, a review of our other long shelf life products we have sold through the same or similar channels. Further, we monitor the activities and clinical trials of our key competitors and assess the potential impact on our future sales and return expectations where necessary. Expected returns for our marketed drugs are generally low because the shelf life for these products ranges from 24 months for Truvada and up to 36 months for AmBisome and Viread in the United States. If conditions become more competitive for any of the markets served by our drugs or if other circumstances change, we may take actions to increase our product return estimates or we may offer additional customer incentives. This would result in an incremental reduction of future revenue at the time the return estimate is changed or new incentives are offered.

Contract revenue for research and development is recorded as performance occurs and the earnings process is completed based on the performance requirements of the contract. Nonrefundable contract fees for which no further performance obligations exist, and where there is no continuing involvement by Gilead, are recognized on the earlier of when the payments are received or when collection is reasonably assured.

Revenue from non-refundable up-front license fees and milestone payments where we continue to have involvement such as through a development collaboration or an obligation to supply product is recognized as performance occurs and our obligations are completed. In accordance with the specific terms of Gilead’s obligations under these types of arrangements, revenue is recognized as the manufacturing obligation is fulfilled or ratably over the development period. Revenue associated with substantive at-risk milestones is recognized based upon the achievement of the milestones as defined in the

respective agreements. Advance payments received in excess of amounts earned are classified as deferred revenue.

Allowance for Doubtful Accounts

We also maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. This allowance is based on our analysis of several factors including, but not limited to, contractual payment terms, historical payment patterns of our customers and individual customer circumstances, an analysis of days sales outstanding by customer and geographic region, and a review of the local economic environment and its potential impact on government funding and reimbursement practices. If the financial condition of our customers or the economic environment in which they operate were to deteriorate, resulting in an inability to make payments, additional allowances may be required. Our allowance for doubtful accounts balance as a percentage of total accounts receivable did not materially change from December 31, 2003 to December 31, 2004. We believe that the allowance for doubtful accounts is adequate to cover anticipated losses under current conditions; however, significant deterioration in any of the above factors, especially with respect to the government funding and reimbursement practices in the European market could materially change these expectations and result in an increase to our allowance for doubtful accounts.

Inventories

We write down our inventory based on historical review of the quantity of bad batches experienced during the manufacturing process and expectations of production and inventory levels. We also perform quality control reviews of our individual raw material batches. We generally do not record inventory write-offs based on estimated obsolescence or risk of competition primarily because the shelf life of our products is long. However, if our current assumptions about future production or inventory levels, demand or competition were to change or if actual market conditions are less favorable than those projected by management, inventory write-downs may be required which could negatively impact our product gross margins and results of operations.

Clinical Trial Accruals

We record accruals for estimated clinical and preclinical study costs. Most of our clinical and preclinical studies are performed by third party contract research organizations (CROs). These costs are a significant component of research and development expenses. During 2004, 2003 and 2002, we incurred $24.7 million, $15.0 million and $23.9 million, respectively, of CRO costs. We accrue costs for clinical studies performed by CROs on a straight-line basis over the term of the service period and adjust our estimates, if required, based upon our on-going review of the level of effort actually incurred by the CRO. Initially we estimate that the work performed under the contracts occurs ratably over the periods to the expected milestone, event or total contract completion date. The expected completion dates are estimated based upon the terms of the contracts and past experience with similar contracts. These estimates may or may not match the actual services performed by the organizations as determined by patient enrollment levels and other measures of activities specified in the contract. As a result, we validate our accruals quarterly through written vendor confirmations and detailed reviews of the activities performed for our significant contracts. Based upon the results of these validation processes, we assess the appropriateness of our accruals and make any adjustments we deem necessary to ensure that our expenses reflect the actual effort incurred by the CROs. Generally, a significant portion of the total costs are associated with start up activities for the trial and patient enrollment. Gilead extensively outsources its clinical trial activities and usually performs only a small portion of the start-up activities in-house. As a result, CROs typically perform most of the total start-up activities for our trials, including document preparation, site identification, screening and preparation, pre-study visits, training and program management. On a

budgeted basis, these costs are typically 20% to 30% of the total contract value. On an actual basis, this percentage range is significantly wider as many of our contracts are either expanded or reduced in scope compared to the original budget while the start-up costs for the particular trial do not change significantly. Start-up costs usually occur within a few months after the contract has been established and are milestone or event driven in nature. The remaining activities and related costs, such as patient monitoring and administration, generally occur ratably throughout the life of the individual contract or study. Most contracts are negotiated as fixed unit prices and can vary in length between six months for a single dose Phase 1 study and up to two years or more for a more complex Phase 3 study. The average length of contract in 2004, 2003 and 2002 has been at the upper end of this range in order to provide long term safety and efficacy data to support the commercial launches of Viread, Truvada, Hepsera and Emtriva. Through December 31, 2004, differences between actual and estimated activity levels for any particular study were not significant enough to require a material adjustment. All of our material CRO contracts are terminable by us upon written notice and Gilead is generally only liable for actual effort expended by the CRO at any point in time during the contract, regardless of payment status. Amounts paid in advance of services being performed will be refunded if a contract is terminated. However, if management does not receive complete and accurate information from our vendors or has underestimated activity levels associated with a study at a given point in time, we would have to record additional and potentially significant research and development expenses in future periods.

Tax Provision

We develop our income tax provision including deferred tax assets and liabilities, based on significant management judgment. We evaluate the realizibility of our deferred tax assets on a quarterly basis. We record a valuation allowance to reduce our deferred tax assets to the amounts that are likely to be realized. We consider future taxable income, ongoing tax planning strategies and our historical financial performance in assessing the need for a valuation allowance. If we expect to realize deferred tax assets for which we have previously recorded a valuation allowance, we would reduce the valuation allowance in the period in which such determination is first made. Such an adjustment was made in the fourth quarter of 2003 and 2004 when we determined that it was more likely than not that certain of our deferred tax assets would be realized, and therefore, we released the related valuation allowance. This resulted in an income tax benefit for 2003 and 2004 of approximately $111.6 million and $14.2 million, respectively. Similarly, if we determine that we would not be able to realize all or part of our deferred tax assets for which we have no valuation allowance, we would increase the valuation allowance in the period in which such determination is first made. Our future effective income tax rate may be affected by such factors as changes in tax laws or rates, changes in the interpretation of these laws, the impact of accounting for employee stock options beginning in the second half of 2005, and overall changes in future levels of earnings and research and development and capital spending.

Management has discussed the development and selection of these critical accounting policies with the Audit Committee of Gilead's Board of Directors and the Audit Committee has reviewed the disclosure presented above relating to them.

Results of Operations

Total Revenues

We had total revenue of $1.32 billion in 2004, $867.9 million in 2003 and $466.8 million in 2002. Included in total revenue are product sales, royalty revenue and contract revenue includes revenue earned from research and development (R&D) and manufacturing collaborations.

Product Sales

Product sales consisted of the following (in thousands):

	2004	Change	2003	Change	2002
Viread	$ 782,915	38%	$ 566,478	151%	$ 225,815
Emtriva	57,600	475%	10,021	—	—
Truvada	67,865	—	—	—	—
Total HIV products	908,380	58%	576,499	155%	225,815
AmBisome	211,688	7%	198,350	7%	185,669
Other	122,156	99%	61,492	396%	12,395
Total product sales	$ 1,242,224	49%	$ 836,341	97%	$ 423,879

Product sales increased 49% in 2004 compared to 2003 and 97% in 2003 compared to 2002, due primarily to the increase in the volume of sales within our HIV products. A significant percentage of our product sales continue to be denominated in foreign currencies. We use forward contracts to hedge a percentage of our forecasted international sales, primarily those denominated in the Euro. This reduces, but does not eliminate, fluctuations in sales due to changes in foreign currency exchange rates. Losses on these revenue hedges reduced increases in product sales by $2.5 million in 2004, $2.8 million in 2003 and $1.0 million in 2002, due to fluctuations in exchange rates. However, product sales (mainly Viread and AmBisome) benefitted overall, primarily from the increases in the exchange rates for the Euro and the British Pound in comparison with the U.S. dollar: $43.7 million when comparing 2004 to 2003 and $43.6 million when comparing 2003 to 2002.

Prior to 2004, we experienced significant fluctuations in U.S. distribution channel inventory levels due to speculative purchasing by the major wholesalers. As a result, we experienced increased quarter over quarter sales volatility from these purchasing patterns. In order to help alleviate these fluctuations, i n July 2004, we entered into inventory management agreements (IMAs) with AmerisourceBergen Drug Corporation, Cardinal Health, Inc. and McKesson Corporation, three major pharmaceutical wholesalers that distribute more than 90 percent of the portfolio of products that we sell in the United States. These agreements were implemented to limit speculative buying and to help ensure that wholesaler purchasing is more consistent with customer demand and more predictable. Under these agreements, we agreed to pay the wholesalers a fee in exchange for product distribution and inventory management services, market research information, return goods processing assistance and counterfeit product detection services. Such fees are recorded as a reduction to product sales in the consolidated statements of operations. Additionally, under the terms of the agreements, each wholesaler has agreed not to exceed specified maximum levels of inventory on hand. As of the end of December 2004, we believe that these three major wholesalers have inventories on-hand for all Gilead products of less than one month’s supply, which is in compliance with the contractually specified levels.

Viread, Emtriva and Truvada were approved for sale in the United States in October 2001, July 2003 and August 2004, respectively. Viread and Emtriva were approved for sale in the European Union in February 2002 and October 2003, respectively. Sales of Viread were 63%, 68% and 53% of total product sales in 2004, 2003 and 2002, respectively. Of the Viread sales in 2004, $437.5 million were U.S. sales, an increase of 23% versus 2003, and $345.4 million were international sales, an increase of 64% versus 2003. Of the Viread sales in 2003, $355.9 million were U.S. sales, an increase of 113% versus 2002, and $210.6 million were international sales, an increase of 258% versus 2002. Since Emtriva’s introduction in July 2003, sales increased significantly from $10.0 million in 2003 to $57.6 million in 2004. Also, since August 2004 when Truvada was approved for sale in the United States, product sales have totaled $67.9 million through December 31, 2004. Total HIV product sales in 2004 were $27.4 million higher compared to 2003 due to the favorable European currency environment, the majority of which relates to

Viread sales. We believe that as our product sales mix changes with patients who are currently taking Viread and/or Emtriva switching to Truvada, looking at our HIV products' sales collectively is a more relevant basis for period-over-period comparison. Sales of HIV products as a percentage of total product sales were 73%, 69% and 53% for 2004, 2003 and 2002, respectively. In 2005, we expect sales from our HIV products to be $1.2 billion to $1.25 billion for the full year.

Sales of AmBisome were 17%, 24% and 44% of total product sales in 2004, 2003 and 2002, respectively. As our HIV and HBV product sales continue to increase, AmBisome sales are decreasing as a percentage of total product sales. Of the AmBisome sales in 2004, $11.4 million were U.S. sales, a decrease of 17% versus 2003, and $200.3 million were international sales, an increase of 9% versus 2003. Of the AmBisome sales in 2003, $13.8 million were U.S. sales, a decrease of 10% versus 2002, and $184.6 million were international sales, an increase of 8% over 2002. Reported AmBisome sales for 2004 were $16.3 million higher due to the favorable currency environment compared to 2003. On a volume basis, AmBisome sales in the United States decreased 2% from 2003 while sales volume in Europe increased slightly by 1% compared to 2003. When analyzing the decrease in U.S. sales, it is important to note that while U.S. product sales decreased 17% when comparing 2004 to 2003, volume decreased only 2%. Our discussion of U.S. AmBisome sales relates solely to our sales of AmBisome to Fujisawa which is recorded at our manufacturing cost. In 2004, due to greater manufacturing efficiencies, our per unit manufacturing cost for AmBisome decreased, thereby decreasing revenues reported for our sales to Fujisawa. Royalties that we earn on sales of AmBisome by Fujisawa are discussed below. With continuing competition, we expect AmBisome sales for 2005 to be in the range of $195 million to $205 million.

Royalty Revenue

We recorded royalty revenues of $63.4 million in 2004, compared with $25.2 million in 2003 and $20.4 million in 2002. During this three-year period, our most significant source of royalty revenue resulted from sales of Tamiflu by Roche and sales of AmBisome in the United States by Fujisawa under a co-promotion arrangement with us. Royalty revenues earned on sales of Tamiflu were $44.6 million, $12.0 million and $3.4 million in 2004, 2003 and 2002, respectively. Royalty revenues earned on sales of AmBisome by Fujisawa were $13.0 million, $12.5 million and $15.7 million in 2004, 2003 and 2002, respectively. As it is difficult to estimate third party product sales, we record royalty revenue from Roche one quarter in arrears. Due to a severe influenza epidemic in the United States in late 2003 through early 2004, our royalty revenues increased substantially during the first and second quarters of 2004. Increased awareness and discussion about the supply of influenza treatments in 2004 has further increased Roche's sales of Tamiflu and consequently, our royalties for the third and fourth quarters of 2004.

Contract Revenue

Total contract revenue was $19.0 million in 2004, compared with $6.3 million in 2003 and $22.5 million in 2002. In 2004, contract revenue consisted primarily of $10.0 million in research and milestone revenue earned from Eyetech Pharmaceuticals which included $7.6 million net milestone payments earned upon the filing of new drug applications by Eyetech in Europe and the United States for Macugen (pegaptanib sodium injection). In 2003, the primary source of contract revenue consisted of $2.2 million in license fees earned in conjunction with our licensing agreement with Eyetech for Macugen. In 2002, contract revenue primarily consisted of $8.1 million due to our licensing of the SELEX process patent estate to Archemix, which, due to collectibility concerns, we recognized on a cash basis, and $8.0 million in milestone payments from Roche for the European prophylaxis and treatment approvals of Tamiflu.

In December 2001, we completed the sale of our oncology assets to OSI. Under the terms our agreement, we are entitled to additional payments from OSI of up to $30.0 million in either cash or a combination of cash and OSI stock if and when OSI reaches certain development milestones for NX 211, the most advanced of the oncology product candidates sold to OSI. Under a related manufacturing

agreement, we produce NX 211 and GS 7904L, the two liposomal products included in the sales at our manufacturing facility in San Dimas, California. In 2004, 2003 and 2002, we recognized $1.4 million, $1.1 million and $3.3 million, respectively, of contract revenue under this manufacturing agreement.

Cost of Goods Sold and Product Gross Margins

The following table indicates cost of goods sold and product gross margins (in thousands):

	2004	Change	2003	Change	2002
Total product sales	$ 1,242,224	49%	$ 836,341	97%	$ 423,879
Cost of goods sold	$ 166,587	48%	$ 112,691	62%	$ 69,724
Gross margin percentage	86.6%		86.5%		83.6%

Our gross margin was relatively flat from 2003 to 2004 as the positive impact of improvements in certain manufacturing processes and a favorable foreign currency environment was offset by changes in product sales mix. Comparing 2003 to 2002, gross margin improved primarily due to a change in product mix as Viread, a higher margin product, contributed more significantly to net product sales in 2003.

Changes in foreign currency exchange rates impact gross margins since we price our products in the currency of the country into which the products are sold while a significant majority of our manufacturing costs are in U.S. dollars. For example, an increase in the value of these foreign currencies relative to the U.S. dollar will positively impact gross margins since our manufacturing costs will remain approximately the same while our revenues after being translated into U.S. dollars, will increase. Although the weakening U.S. dollar has positively impacted gross revenues and gross margins in 2004, 2003 and 2002, the full effect of the foreign currency exchange rates has been moderated by our hedging program on forecasted international sales. Except for the potential impact of unpredictable and uncontrollable changes in exchange rates relative to the U.S. dollar and the mix of product sales between our various HIV products, Hepsera and AmBisome, we expect gross margins in 2005 to be consistent with those of 2004, within the range of 85-86%.

Research and Development Expenses

The following table summarizes our research and development expenses into these major components (in thousands):

	2004	Change	2003	Change	2002
Research	$ 43,872	17%	$ 37,494	35%	$ 27,847
Clinical development	146,983	37%	107,438	20%	89,379
Pharmaceutical development	32,697	(11)%	36,832	49%	24,641
Total	$ 223,552	23%	$ 181,764	28%	$ 141,867

The three major categories of research and development (R&D) expenses consist of personnel costs, including salaries and benefits, clinical studies performed by contract research organizations, materials and supplies, and overhead allocations consisting of various support and facilities related costs. Research costs typically consist of preclinical and toxicology work. Clinical development costs include Phase 1, 2, 3 and 4 clinical trials as well as expanded access programs. Pharmaceutical development costs consist of product formulation and chemical analysis. Prior to 2004, clinical development consisted only of clinical trial expenses for Phases 1 through 3 and Phase 4 in the United States. Phase 4 European clinical trials were included in sales, general and administrative (SG&A). During 2004, in order to better reflect the nature of the European Phase 4 clinical trials, we began recording these clinical trial expenses as research and development. In order to be consistent with the current year presentation, $16.9 million and $7.1 million of expenses were reclassified from selling, general and administrative to research and development expenses for the years ended December 31, 2003 and 2002, respectively.

The $41.8 million increase in R&D expenses in 2004 over 2003 was primarily attributable to increased salaries of $10.2 million due largely to higher headcount, increased contract research organization costs of $9.7 million associated with increased clinical activities, as well as $13.0 million research and license fees paid by us in relation to hepatitis C collaboration agreements effective in the fourth quarter of 2004. The new 2004 collaborations were entered into with Achillion and Genelabs and required us to pay aggregate license fees of $13.0 million which were expensed as R&D as the underlying technology had no alternative future use. The increase in 2004 R&D activity was partially offset by a decrease in spending due to the discontinuation of our two programs, GS 9005 and GS 7340, that focused on the development of certain HIV investigational products. It is also important to note that our 2003 R&D expenses included a reimbursement to Gilead of $13.2 million from the settlement of a contractual dispute with a vendor.

T he $39.9 million increase in R&D spending in 2003 versus 2002 was primarily attributable to increased salaries of $14.4 million due largely to higher headcount, increased clinical supplies costs of $7.0 million and increased clinical trials costs associated with the development of Emtriva and Truvada, the co-formulation of Viread and Emtriva. Also as mentioned above, in 2003, we settled a contractual dispute with a vendor that resulted in reimbursement to us of $13.2 million that was recorded to research and development expense.

In 2005, we expect R&D expenses to be approximately $240 million to $260 million. This estimated increase in expenses over 2004 levels reflects increased spending on our internal research and development efforts as well as costs associated with post-marketing studies to support our products, but excludes any expenses we may incur associated with potential collaborations or strategic acquisitions, including license and milestone fees or cost sharing arrangements, and the impact of accounting for employee stock based compensation beginning in the second half of 2005.

Industry reports indicate that a biopharmaceutical company generally takes 10 to 15 years (an average of 12 years) to research, develop and bring to market a new prescription medicine in the United States. These averages are generally consistent with the projects that we undertake internally, although our recent product development timelines have been on a slightly more accelerated basis. Drug development in the United States is a process that includes several steps defined by the FDA. The process begins with the filing of an IND, which, if successful, allows opportunity for clinical study of the potential new medicine. Clinical development typically involves three phases of study: Phase 1, 2 and 3, and generally accounts for an average of seven years of a drug’s total development time. The most significant costs associated with clinical development are the Phase 3 trials as they tend to be the longest and largest studies conducted during the drug development process. We currently have products in development that are in Phase 3 studies. The successful development of our products is highly uncertain. Completion dates and R&D expenses can vary significantly for each product and are difficult to predict. Even after successful development and FDA approval of a product, we undertake additional studies to try to expand the product’s label and market potential. For a more complete discussion of the risks and uncertainties

associated with completing the development of products, see the "Risk Factors That Affect Gilead" section of Item I above.

Selling, General and Administrative Expenses

The following table highlights the year to year changes in selling, general and administrative expenses (in thousands):

	2004	Change	2003	Change	2002
Selling, general and administrative	$ 302,793	30%	$ 233,266	34%	$ 174,192

SG&A expenses for the year ended December 31, 2004 were $302.8 million compared to $233.3 million for the year ended December 31, 2003, which includes the reclassification of phase IV clinical trial expenses incurred in 2003 to R&D of $16.9 million. The significant increase in expenses in 2004 compared to 2003 is primarily due to increased salaries of $14.2 million due largely to higher headcount, increased consulting fees of $5.9 million related to Sarbanes-Oxley compliance and business strategy consulting, as well as increased costs of $12.6 million relating to speaker's programs, grants and journal advertising. The remainder of the increase in SG&A expenses in 2004 compared to 2003 is due to our increased global marketing efforts and increased infrastructure required to support the growth of our business. During 2004, as part of our infrastructure investments, we implemented a reorganization of our sales and marketing functions into a newly created commercial division. In conjunction with this reorganization, we created and filled the new position of executive vice-president, commercial operations who will have responsibility over global commercial operations and strategy for our product portfolio.

The increase in expenses in 2003 compared to 2002, which includes the reclassification of phase IV clinical trial expenses to R&D of $7.1 million, is primarily due to increased salaries of $13.4 million due largely to higher headcount, an increase in hedging costs of $10.6 million, increased costs of $9.0 million relating to marketing meetings and grants, as well as increased general and directors and officers insurance of $6.4 million. The remainder of the increase in SG&A expenses is due to our global sales and marketing efforts including the expansion of our U.S. and European sales forces and increased infrastructure required to support the growth of our business.

In 2005, we expect SG&A expenses to be approximately $350 million to $370 million primarily due to the anticipated launch costs for Truvada in the European Union, as well as ongoing investment in our global commercial organization through hiring and promotional programs, but excludes any expenses we may incur associated with potential collaborations or strategic acquisitions and the impact of applying the new standard on the accounting for employee stock based compensation beginning in the second half of 2005.

Purchased In-process Research and Development

In connection with the acquisition of the net assets of Triangle completed in January 2003, we recorded purchased in-process research and development expenses of $488.6 million in the first quarter of 2003. The charge was due to Triangle's incomplete research and development programs that had not yet reached technological feasibility and had no alternative future use as of the acquisition date.

The value of the purchased in-process research and development was determined by estimating the related future net cash flows between 2003 and 2020 using a present value risk adjusted discount rate of 15.75%. This discount rate is a significant assumption and is based on our estimated weighted average cost of capital adjusted upward for the risks associated with the projects acquired. The projected cash flows from the acquired projects were based on estimates of revenues and operating profits related to the projects considering the stage of development of each potential product acquired, the time and resources needed to complete the development and approval of each product, the life of each potential commercialized product and associated risks including the inherent difficulties and uncertainties in

developing a drug compound including obtaining FDA and other regulatory approvals, and risks related to the viability of and potential alternative treatments in any future target markets. A summary of these programs at the acquisition date, and updated for subsequent developments through February 2005, is as follows:

Program	Description	Status of Development	Estimated Acquisition Date Fair Value (in millions)
Emtricitabine for HIV	A nucleoside analogue that has been shown to be an inhibitor of HIV replication in patients.	Four phase 3 studies were completed prior to the acquisition date. U.S. marketing approval was received from the FDA in July 2003 for Emtriva and European Union approval received from the European Commission in October 2003.	$178.8
Emtricitabine/Tenofovir DF Fixed Dose Combination for HIV Therapy	A fixed-dose co-formulation of tenofovir and emtricitabine.	As of the acquisition date, work had not commenced on the potential co-formulation except to the extent that work on emtricitabine as a single agent was progressing. In March 2004, applications for marketing approval were submitted in the United States and European Union and in August 2004 marketing approval in the United States was received from the FDA for Truvada, the fixed-dose co-formulation of tenofovir and emtricitabine. Marketing approval in the European Union was received in February 2005.	$106.4
Amdoxovir for HIV	A purine dioxolane nucleoside that may offer advantages over other marketed nucleosides because of its activity against drug resistant viruses as exhibited in patients with HIV infection.	This program was in Phase 2 trials at acquisition date. In 2004, we terminated the licensing agreement with Emory University and the University of Georgia Research Foundation, Inc. and development was discontinued.	$114.8
Clevudine for HBV	A pyrimidine nucleoside analogue that has been shown to be an inhibitor of HBV replication in patients chronically infected with HBV.	This program was in Phase 1/2 trials at acquisition date. In August 2003, the licensing agreement with Bukwang Pharm. Ind. Co., Ltd was terminated and development was discontinued.	$58.8
Emtricitabine for HBV	An inhibitor of HBV replication in patients chronically infected with HBV.	One phase 3 trial has been completed as of December 31, 2004.	$29.8

Asset Impairment

During 2003, we recorded an asset impairment charge of $10.2 million on certain of our long-lived assets, primarily leasehold improvements, manufacturing and laboratory equipment. This non-cash charge was driven by the decision in December 2003 to terminate our liposomal research and development activities in San Dimas and discontinue the DaunoXome product line. The impairment was based on our analysis of the undiscounted cash flows to be generated from the affected assets as compared to their carrying value. As the carrying value exceeded the related estimated undiscounted cash flows, we wrote the carrying value of the long-lived assets down to their estimated fair value.

In 2004, subsequent to our decision to discontinue the DaunoXome product line, we received unanticipated requests in Europe asking Gilead to reconsider selling DaunoXome. As a result of these requests, management decided to continue selling this product in certain countries and we are still evaluating our supply and sales strategy with respect to DaunoXome. In accordance with U.S. generally accepted accounting principles , the new cost basis for the impaired assets was not adjusted for these new facts and circumstances.

Gain (Loss) on Marketable Securities

Pursuant to our agreement with Eyetech entered into in March 2000, we received a warrant to purchase 791,667 shares of Eyetech series B convertible preferred stock, exercisable at a price of $6.00 per share. In January 2004, Eyetech completed an initial public offering of its common stock at which time we adjusted the fair value of the warrant resulting in a gain of $20.6 million. At that time, the fair value of the warrant was estimated using the Black-Scholes valuation model with a volatility rate of 50% and a discount rate of 2.8%. At the end of the first quarter of 2004, we exercised the warrant on a net basis using shares of Eyetech common stock as consideration for the exercise price and subsequently held 646,841 shares of Eyetech common stock. In the second quarter of 2004, we sold all of the Eyetech shares we owned and realized a gain of approximately $2.3 million, which is included in interest and other income, net, for the year ended December 31, 2004.

In July 2002, we sold all of our remaining shares of OSI common stock for approximately $22.0 million. These shares were partial consideration for the sale of our oncology assets to OSI in December 2001, at which time they were recorded at a fair market value of approximately $38.0 million. In connection with the sale of these remaining shares, we recognized a non-operating loss of approximately $16.0 million in the year ended December 31, 2002.

Make-Whole Payment on Debt Redemption

In October 2004, Gilead called for the redemption of all its outstanding 2% convertible senior notes due December 15, 2007 on November 20, 2004 . The convertible senior notes were called under a provisional redemption based upon the market price of Gilead common stock exceeding certain thresholds. The aggregate principal amount outstanding of the notes was $345.0 million. The convertible senior notes were redeemable at a redemption price equal to 100% of the principal amount of the notes, plus a cash payment equal to accrued and unpaid interest to the redemption date and a cash make-whole payment equal to $60 per $1,000 principal value of the notes less interest actually paid or accrued and unpaid from the date of issuance of the notes to the redemption date. Interest on the convertible senior notes ceased to accrue on the redemption date, and the only remaining right of the holders thereafter was to receive the redemption payment, including accrued and unpaid interest to the redemption date and the make-whole payment. Alternatively, note holders could elect to convert their notes into shares of Gilead common stock at a price of $23.50 per share, or 42.55 shares of Gilead common stock per $1,000 principal amount of the notes. Holders of substantially all of the outstanding notes converted their notes into shares of Gilead’s common stock prior to the November 20, 2004 redemption date. As a result of these conversions, 14,676,952 shares of

common stock were issued to these note holders. In connection with the redemption, Gilead paid aggregate make-whole payments of $7.4 million to note holders.

Interest and Other Income, net

We recorded interest and other income of $18.9 million in 2004, compared with $13.0 million in 2003 and $22.3 million in 2002. The increase in 2004 compared to 2003 is primarily attributable to the higher cash balances and yields over the past year. The decrease in 2003 compared to 2002 is attributable to the significant decline in interest rates and a lower average cash balance due to the acquisition of the net assets of Triangle and the purchase of our Foster City campus, partially offset by positive cash flow from operations. Interest income in 2005 will depend principally upon prevailing interest rates and the level of our cash, cash equivalent and marketable securities balances.

Interest Expense

We incurred interest expense of $7.3 million in 2004, compared with $21.9 million in 2003 and $13.9 million in 2002. The decrease in 2004 over 2003 is primarily due to the conversion of our $250.0 million 5% convertible subordinated debt into shares of our common stock in December 2003. The only outstanding debt during most of 2004 consisted of our $345.0 million 2% convertible senior debt issued in December 2002. In November 2004, we converted our 2% convertible senior notes. The significant increase in 2003 over 2002 is due to the full year of interest on our $345.0 million 2% convertible senior notes which were issued in December 2002. Interest expense for 2003 and 2002 consisted primarily of interest on the $250.0 million 5.0% convertible subordinated notes, which were converted into shares of our common stock in December 2003. We expect interest expense in 2005 to decrease as compared with 2004 primarily due to the conversion of the $345.0 million 2% convertible senior notes in November 2004.

Provision for (Benefit from) Income Taxes

Our provision for (benefit from) income taxes was $207.1 million, ($95.5) million and $1.3 million in 2004, 2003 and 2002, respectively. The 2004 effective income tax rate of 31.5% differs from the U.S. federal statutory rate of 35% generally due to state taxes being more than offset by the recognition of previously unbenefitted net operating losses, tax credit carryforwards and certain earnings being taxed in foreign tax rate jurisdictions with lower tax rates for which no U.S. taxes have been provided because such earnings are planned to be permanently reinvested outside the United States.

The tax benefit in 2003 includes the reversal of our valuation allowance against certain of our deferred tax assets. In December of 2003, we concluded that it was more likely than not that we would realize a portion of the benefit related to our deferred tax assets. Accordingly, we reduced the valuation allowance against the assets and recorded a tax benefit of $111.6 million. The recognition of these deferred tax assets had no impact on our cash flows. Partially offsetting this tax benefit was income tax expense associated with income earned by our foreign subsidiaries, foreign losses benefitted at lower tax rates and the non-tax deductibility of purchased in-process research and development. We had significant net operating loss carryforwards which were used to reduce our U.S. tax liability. Excluding the benefit relating to the reversal of our valuation allowance, and the write off of purchased in-process research and development, our effective tax rate for 2003 was 5%.

The income tax expense in 2002 was primarily associated with income earned by our foreign subsidiaries as we had significant net operating losses in the United States. The provision for 2002 was reduced by a change in the U.S. income tax law. This law allowed net operating loss carryforward deductions to offset 100% of alternative minimum taxable income, resulting in a reduction of U.S. income tax recorded in previous years of $1.3 million.

On October 22, 2004, the American Jobs Creation Act ("the AJCA") was signed into law. The AJCA allows for a deduction of 85% of certain foreign earnings that are repatriated, as defined in the AJCA. We may elect to apply this provision to qualifying earnings repatriations in fiscal 2005. We have started an evaluation of the effects of the repatriation provision; however, we do not expect to be able to complete this evaluation until after Congress or the Treasury Department provide additional clarifying language on key elements of the provision. We expect to complete our evaluation of the effects of the repatriation provision within a reasonable period of time following the publication of the additional clarifying language. The range of possible amounts that we are considering for repatriation under this provision is between zero and $500 million (maximum amount allowable to us as defined in the AJCA). Currently, the related potential range of impact on income taxes cannot be reasonably estimated.

Liquidity and Capital Resources

Cash, cash equivalents and marketable securities totaled $1.25 billion at December 31, 2004, up from $707.0 million at December 31, 2003. In 2004, the increase of $547.0 million was primarily due to net cash provided by operations of $511.4 million and proceeds from issuances of stock under employee stock plans of $78.8 million, partially offset by capital expenditures of $51.4 million. In 2003, the cash decrease of $235.4 million from 2002 was primarily due to the acquisition of Triangle, for which the net cash impact was $375.5 million, the purchase of our Foster City campus for $123.0 million and capital expenditures of $38.6 million, partially offset by proceeds from issuance of stock under employee stock plans of $83.8 million.

Working capital at December 31, 2004 was $1.60 billion compared to $1.08 billion at December 31, 2003. Significant changes in working capital during 2004 included a $144.5 million decrease in current deferred tax assets more than offset by a $118.8 million increase in accounts receivable and a $37.9 million increase in inventory. The $144.5 million decrease in current deferred tax assets was primarily due to the utilization of net operating losses and tax credit carryforwards to offset taxable income. The accounts receivable increase of $118.8 million was primarily due to increased sales of Viread in the United States and Europe and sales from our new product, Truvada, launched in the United States in the latter half of 2004. The $37.9 million increase in inventory was primarily due to an increase in the purchase of raw materials and the production of Viread and Truvada inventory to meet increasing sales demand.

Current liabilities in 2004 increased by $67.6 million from 2003 primarily due to the following: a $15.0 million increase in Medicaid rebate obligations associated with higher sales of Viread; a $14.4 million increase in deferred revenue primarily due to royalties received from Roche; a $12.9 million increase in the liability associated with the fair value of our forward currency contracts as the U.S. dollar continued to weaken against European currencies; an $11.9 million increase in accounts payable primarily due to increases in our raw material purchases in support of Viread and Truvada sales growth; a $9.7 million increase for increased compensation costs and employee benefits with added headcount; and an increase of $4.1 million for distributors fees owed but not yet paid under the inventory management agreements entered into in July 2004. The increase in current liabilities was partially offset by a $4.3 million decrease in accrued clinical and preclinical expenses as a result of decreasing activity associated with the clinical trial programs for Viread and Hepsera towards the end of 2004.

In 2004, we made capital expenditures of $51.4 million compared to $38.6 million in 2003 and $17.6 million in 2002. These expenditures were primarily for domestic and international facilities improvements, including approximately $26.0 million associated with the completion of our pilot plant in Foster City which will be used to develop our drug processes and prepare materials to supply clinical trials, as well as additional spending for laboratory and manufacturing equipment to accommodate our growth. Capital expenditures related to research and development were between 55% and 65% of the $51.4 million spent in 2004, 50% and 60% of the $38.6 million spent in 2003 and 20% to 25% of the $17.6 million spent

in 2002. We expect our capital spending for 2005 to be $55 million to $65 million due to increased infrastructure needs and higher R&D spending.

We believe that our existing capital resources, supplemented by cash generated from our operations, will be adequate to satisfy our capital needs for the foreseeable future. Our future capital requirements will depend on many factors, including:

- the commercial performance of our current and future products,
- the progress and scope of our research and development efforts, including preclinical studies, and clinical trials,
- the cost, timing and outcome of regulatory reviews,
- the expansion of our sales and marketing capabilities,
- administrative expenses,
- the possibility of acquiring manufacturing capabilities or additional office facilities,
- the possibility of acquiring other companies or new products,
- the establishment of additional collaborative relationships with other companies, and
- defense costs associated with, settlements of and adverse results of litigation.

We may in the future require additional funding, which could be in the form of proceeds from equity or debt financings, such as from our universal shelf registration statement filed in December 2003 for the potential issuance of up to $500.0 million of our securities, or additional collaborative agreements with corporate entities. If such funding is required, we cannot assure that it will be available on favorable terms, if at all.

Subsidiaries and Other

We have established a variety of subsidiaries in various countries for the purpose of conducting business in those locations. All of these subsidiaries are consolidated in our financial statements. We do not have any variable interest entities that are unconsolidated in our financial statements. We are also not involved in any non-exchange traded commodity contracts accounted for at fair value. We have no commercial commitments with related parties, except for employee loans.

Contractual Obligations

We have contractual obligations in the form of capital and operating leases, non-cancelable raw material supply arrangements and clinical research organization contracts. The following table summarizes these contractual obligations at December 31, 2004 (in thousands):

	Payments due by period				
Contractual Obligations	Total	Less than one year	1-3 years	3-5 years	More than 5 years
Capital lease obligations	$ 476	$ 221	$ 255	$ —	$ —
Operating lease obligations	88,630	14,160	27,009	20,615	26,846
Capital commitments(1)	1,966	1,966	—	—	—
Inventory purchase obligations(2)	232,181	104,681	85,000	42,500	—
Clinical trials(3)	34,893	22,686	7,718	4,489	—
Total	$ 358,146	$ 143,714	$ 119,982	$ 67,604	$ 26,846

(1) At December 31, 2004, we had firm capital project commitments of approximately $2.0 million relating to facilities improvement. In addition, we have budgeted significant capital expenditures for 2005, mainly due to anticipated increased infrastructure needs and higher R&D spending. We may have more capital spending in future years.

(2) At December 31, 2004, we had firm commitments to purchase active pharmaceutical ingredients. The amounts disclosed only represent minimum purchase requirements. Actual purchases may differ significantly from these amounts.

(3) At December 31, 2004, we had several clinical studies in various clinical trial phases. Our most significant expenditures are to contract research organizations. Although most contracts are cancelable, we generally have not cancelled contracts. These amounts reflect commitments based on existing contracts and do not reflect any future modifications to existing contracts and anticipated or potential new contracts.

Recent Accounting Pronouncement

In December 2004, the FASB issued SFAS No. 123 (revised 2004), *Share-Based Payment* (SFAS 123R), which is a revision of SFAS 123. SFAS 123R supercedes APB 25 and amends SFAS 95, *Statement of Cash Flows* . SFAS 123R requires all share-based payments to employees and directors, including grants of stock options, to be recognized in the statement of operations based on their fair values, beginning with the first interim or annual period after June 15, 2005, with early adoption permitted. The pro forma disclosures previously permitted under SFAS 123 no longer will be an alternative to financial statement recognition. We expect to adopt SFAS 123R in our third quarter of fiscal 2005, beginning July 1, 2005. Under SFAS 123R, we must determine the appropriate fair value model to be used for valuing share-based payments, the amortization method for compensation cost and the transition method to be used at date of adoption. The transition methods include prospective and retroactive adoption options. Under the retroactive options, prior periods may be restated either as of the beginning of the year of adoption or for all periods presented. The prospective method requires that compensation expense be recorded for all unvested stock options and restricted stock at the beginning of the first quarter of adoption of SFAS 123R, while the retroactive methods would record compensation expense for all unvested stock options and restricted stock beginning with the first period restated. We are currently evaluating the requirements of SFAS 123R as well as option valuation methodologies related to our employee and director stock options and employee stock purchase plan. Although we have not yet determined the method of adoption or the effect of adopting SFAS 123R, we expect that the adoption of SFAS 123R will have a material impact on our consolidated results of operations and earnings per share. The impact of adoption of SFAS 123R cannot be predicted at this time because it will depend on, among other things, the levels of share-based payments granted in the future, the method of adoption and the option valuation method used. SFAS 123R also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as a financing cash flow, rather than as an operating cash flow as required under current literature. This requirement will reduce net operating cash flows and increase net financing cash flows in periods after adoption. While we cannot estimate what those amounts will be in the future (because they depend on, among other things, when employees and directors exercise stock options), the amount of operating cash flows recognized in prior periods related to tax deductions were $22.0 million, $132.3 million and $0.4 million in 2004, 2003 and 2002, respectively. Current estimates of option values using the Black-Scholes method may not be indicative of results from valuation methodologies ultimately adopted by Gilead.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Currency Exchange Risk

Our operations include manufacturing and sales activities in the United States as well as sales activities in Europe and Australia. As a result, our financial results could be significantly affected by factors such as changes in foreign currency exchange rates or weak economic conditions in the foreign markets in which we distribute our products. Our operating results are exposed to changes in exchange rates between the U.S. dollar and various foreign currencies, the most significant of which are the Euro, the British pound and the Australian dollar. When the U.S. dollar strengthens against these currencies, the relative value of sales made in the respective foreign currency decreases. Conversely, when the U.S. dollar weakens, the relative amounts of such sales increase. Overall, we are a net receiver of foreign currencies and, therefore, benefit from a weaker U.S. dollar and are adversely affected by a stronger U.S. dollar relative to those foreign currencies in which we transact significant amounts of business.

To mitigate the impact of changes in currency exchange rates on cash flows from our foreign currency sales transactions, we enter into foreign exchange forward contracts to hedge our foreign currency-denominated net monetary assets or liabilities.

A significant percentage of our product sales are denominated in foreign currencies. Increases in the value of the U.S. dollar against these foreign currencies in the past have reduced, and in the future may reduce, our U.S. dollar return on these sales and negatively impact our financial condition. Prior to 2002, we did not hedge our exposure to the impact of fluctuating foreign exchange rates on forecasted sales. In January 2002, we began to use forward contracts to hedge a percentage of our forecasted international sales, primarily those denominated in the Euro currency. In recent years, due to the weakening of the U.S. dollar, foreign currency exchange fluctuations have positively impacted product sales and gross margin; however, the full impact of the favorable foreign currency environment has been moderated by the hedge contracts that we had entered into.

The following table summarizes the notional amounts, average currency exchange rates and fair values of our open foreign exchange forward contracts at December 31, 2004. All contracts have maturities of one year or less. Average rates are stated in terms of the amount of foreign currency per U.S. dollar. Fair values represent estimated settlement amounts at December 31, 2004 (notional amounts and fair values in U.S. dollars in thousands):

Currency	Notional Amount	Average Rate	Fair Value December 31, 2004
British Pound	$ 48,095	0.5509	$ (2,178)
Euro	525,501	0.7716	(25,783)
Australian Dollar	7,146	1.2972	(2)

The total notional amount of $580.7 million and fair value of ($28.0) million on our open foreign exchange forward contracts at December 31, 2004 compares with a total notional amount of $405.0 million and fair value of ($14.5) million on our open foreign exchange forward contracts at December 31, 2003. The significant increase in outstanding contracts from 2003 to 2004 is primarily attributed to the projected increase in revenues over the forecast periods.

Interest Rate Risk

Our portfolio of available-for-sale investment securities and our fixed-rate liabilities create an exposure to interest rate risk. With respect to the investment portfolio, we adhere to an investment policy that requires us to limit amounts invested in securities based on duration, industry group, investment type

and issuer, except for securities issued by the U.S. government. The goals of our investment policy, in order of priority, are as follows:

- Safety and preservation of principal and diversification of risk;
- Liquidity of investments sufficient to meet cash flow requirements; and
- Competitive after-tax rate of return.

The following table summarizes the expected maturities and average interest rates of our fixed-rate interest-bearing assets and fixed-rate liabilities at December 31, 2004 (dollars in thousands).

	Years ending December 31,							Fair Value December 31,
	2005	2006	2007	2008	2009	Thereafter	Total	2004
Assets								
Available-for-sale securities	$ 725,991	$ 318,512	$ 66,335	—	—	—	$ 1,110,838	$ 1,110,838
Average interest rate	2.04 %	2.76 %	2.51 %	—	—	—		
Liabilities								
Long-term obligations, including current portion (1)	$ 14,559	$ 13,536	$ 12,813	$ 12,211	$ 7,851	$ 24,700	$ 85,670	$ 85,670
Average interest rate	12.8 %	13.4 %	10.6 %	—	—	—		

(1) Long-term obligations consist of capital leases and operating leases (net of noncancelable subleases). The interest portion of payments due is included.

International Credit Risk

Our accounts receivable balance at December 31, 2004 was $371.2 million compared to $235.2 million at December 31, 2003 and $125.0 million at December 31, 2002. The growth in our accounts receivable balances was primarily due to higher product sales for Viread in the United States and Europe. In certain countries where payments are typically slow, primarily Greece, Italy, Portugal and Spain, our accounts receivable balances are significant. In most cases, these slow payment practices reflect the pace at which governmental entities reimburse our customers. This, in turn, may increase the credit risk related to certain of our customers. Sales to customers in countries that tend to be relatively slow paying have in the past increased, and in the future may further increase, the average length of time that accounts receivable are outstanding. At December 31, 2004, our past due accounts receivable for Greece, Italy, Portugal and Spain totaled approximately $166.6 million, of which approximately $100.5 million was more than 120 days past due. To date, we have not experienced significant losses with respect to the collection of our accounts receivable and we believe that substantially all our accounts receivable balances are collectible. We perform credit evaluations of our customer's financial condition and generally have not required collateral.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements required by this item are set forth beginning at page 52 of this report and are incorporated herein by reference.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

(a) Evaluation of Disclosure Controls and Procedures

An evaluation as of December 31, 2004 was carried out under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our "disclosure controls and procedures," which are defined under SEC rules as controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files under the Securities Exchange Act of 1934 (Exchange Act) is recorded, processed, summarized and reported within required time periods. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective.

(b) Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Securities Exchange Act Rule 13a-15(f). Our internal control system is designed to provide reasonable assurance regarding the preparation and fair presentation of financial statements for external purposes in accordance with generally accepted accounting principles. All internal control systems, no matter how well designed, have inherent limitations and can provide only reasonable assurance that the objectives of the internal control system are met.

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control - Integrated Framework. Based on our evaluation, we concluded that our internal control over financial reporting was effective as of December 31, 2004.

Ernst & Young LLP, an independent registered public accounting firm that has audited our consolidated financial statements included herein, has issued an audit report on our assessment of internal control over financial reporting.

(c) Changes in Internal Control over Financial Reporting

Our management, including our Chief Executive Officer and Chief Financial Officer, has evaluated any changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2004, and has concluded that there was no change during such quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information required by this Item concerning our directors and executive officers is incorporated by reference to the sections of our Definitive Proxy Statement filed with the SEC pursuant to Regulation 14A in connection with the 2005 Annual Meeting (the Proxy Statement) under the headings "Nominees", "Executive Officers", "Board of Directors", "Audit Committee" and "Compliance with Section 16(a) of the Securities Exchange Act of 1934".

Gilead's written Code of Ethics applies to all of its directors and employees, including its executive officers. The Code of Ethics is available on Gilead's website at *http://www.investors.gilead.com* . Changes to or waivers of the Code of Ethics will be disclosed on the same website.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated by reference to the sections of our Proxy Statement under the headings "Executive Compensation" and "Compensation Committee Report".

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item is incorporated by reference to the section of our Proxy Statement under the heading "Security Ownership of Certain Beneficial Owners and Management".

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this Item is incorporated by reference to the sections of our Proxy Statement under the headings "Compensation Committee Interlocks and Insider Participation", "Certain Transactions" and "Executive Compensation".

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item is incorporated by reference to the sections of our Proxy Statement under the heading "Principal Accountant Fees and Services."

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Form 10-K:

(1) Index list to Financial Statements:

(2) Schedule II is included on page 96 of this report. All other schedules are omitted because they are not required or the required information is included in the financial statements or notes thereto.

(3) Exhibits

The following exhibits are filed herewith or incorporated by reference:

Exhibit Footnote	Exhibit Number	Description of Document
(17)	2.1	Asset Purchase Agreement between Registrant and OSI Pharmaceuticals, Inc. dated as of November 26, 2001.
(21)	2.2	Agreement and Plan of Merger, among Registrant, Simbolo Acquisition Sub, Inc., a wholly-owned subsidiary of Registrant, and Triangle Pharmaceuticals, Inc., dated as of December 3, 2002.
(16)	3.1	Amended and Restated Certificate of Incorporation of the Registrant, as amended.
(1)	3.2	Bylaws of the Registrant, as amended and restated March 30, 1999.
	4.1	Reference is made to Exhibit 3.1 and Exhibit 3.2.
(3)	4.2	Amended and Restated Rights Agreement dated as of October 21, 1999 between the Registrant and ChaseMellon Shareholder Services, LLC.
(7)	4.3	Agreement and Plan of Merger dated February 28, 1999 by and among Registrant, Gazelle Acquisition Sub, Inc. and NeXstar Pharmaceuticals, Inc.
(32)	4.6	Registration Rights Agreement dated as of December 18, 2002 between the Registrant and Goldman, Sachs & Co.
(29)	4.7	First Amendment to Amended and Restated Rights Agreement dated as of October 29, 2003 between the Registrant and Mellon Investor Services, LLC.
(4)	10.1	Form of Indemnity Agreement entered into between the Registrant and its directors and executive officers.
(4)	10.2	Form of Employee Proprietary Information and Invention Agreement entered into between Registrant and certain of its officers and key employees.
(4)	10.3	Registrant's 1987 Incentive Stock Option Plan and related agreements.
(4)	10.4	Registrant's 1987 Supplemental Stock Option Plan and related agreements.
(1)	10.5	Registrant's Employee Stock Purchase Plan, as amended March 30, 1999.
(22)	10.6	Registrant's 1991 Stock Option Plan, as amended and restated April 5, 2000, as amended January 18, 2001 and as amended January 30, 2002.
(4)	10.7	Form of Non-Qualified Stock Option issued to certain executive officers and directors in 1991.
(4)	10.9	Letter Agreement, dated as of September 23, 1991 between Registrant and IOCB/REGA, with exhibits with certain confidential information omitted.
(5)	10.11	Amendment Agreement, dated October 25, 1993 between Registrant and IOCB/REGA, and related license agreements and exhibits with certain confidential information omitted.
(16)	10.12	Amendment Agreement, dated December 27, 2000 between Registrant and IOCB/REGA.
(22)	10.14	Registrant's 1995 Non-Employee Directors' Stock Option Plan, as amended January 26, 1999, and as amended January 30, 2002.
(6)	10.19	Development and License Agreement between Registrant and F. Hoffmann-La Roche Ltd. and Hoffmann-La Roche Inc. dated September 27, 1996 with certain confidential information omitted.
(2)	10.21	NeXstar Pharmaceuticals, Inc.'s 1993 Incentive Stock Plan, adopted February 8, 1993, as amended.
(10)	10.22	NeXstar Pharmaceuticals, Inc.'s 1995 Director Option Plan, adopted July 25, 1995.
(11)	10.23	Vestar, Inc. 1988 Stock Option Plan.
(36)	10.24	Lease, dated February 24, 2003, between Registrant and Majestic MAPA Properties, LLC.

(36)	10.25	Lease, dated February 24, 2003, between Registrant and Majestic MAPA Properties, LLC.
(12)	10.26	Assignment and Royalty Agreement, dated December 21, 1990, effective as of June 2, 1989, between Vestar, Inc. and City of Hope National Medical Center.
(11)	10.28	Agreement by and between Fujisawa USA, Inc. and Vestar, Inc., dated August 9, 1991, and Amendment No. 1 thereto, dated as of May 17, 1994.
(10)	10.29	Amendment No. 2 to agreement between Fujisawa USA, Inc. and Vestar, Inc., dated as of April 3, 1995, between Fujisawa USA, Inc. and Vestar, Inc. with certain confidential information omitted.
(19)	10.30	Amendment No. 3 to Agreement between Fujisawa USA, Inc. and the Registrant, dated March 4, 1996, to the Agreement by and between Fujisawa USA, Inc. and Vestar, Inc., dated August 9, 1991.
(36)	10.31	Lease, dated July 20, 2000, among Registrant, Majestic Realty Co. and Majestic-MAPA Properties, LLC and the First Amendment thereto dated March 3, 2003.
(14)	10.33	License and Distribution Agreement, dated September 26, 1997, by and between Sumitomo Pharmaceuticals Co., Ltd. and NeXstar Pharmaceuticals, Inc. with certain confidential information omitted.
(13)	10.34	Settlement Agreement, dated August 11, 1997, by and among NeXstar Pharmaceuticals, Inc., Fujisawa U.S.A., Inc. and The Liposome Company, Inc. with certain confidential information omitted.
(14)	10.35	Amendment, dated April 30, 1998, between Sumitomo Pharmaceuticals Co., Ltd. and NeXstar Pharmaceuticals, Inc. to the License and Distribution Agreement, dated September 26, 1996, between Sumitomo and NeXstar Pharmaceuticals, Inc.
(20)	10.36	The Corporate Plan for Retirement Select Plan—Basic Plan Document.
(20)	10.37	The Corporate Plan for Retirement Select Plan—Adoption Agreement.
(20)	10.38	Addendum to the Gilead Sciences, Inc. Deferred Compensation Plan.
(18)	10.39	Licensing Agreement, dated April 26, 2002, by and between Gilead World Markets, Limited and Glaxo Group Limited.
(19)	10.40	Employment Agreement, dated July 1, 2002, by and between Gilead Sciences, Inc. and Sharon Surrey-Barbari.
(23)	10.41	Triangle Pharmaceuticals, Inc. 1996 Stock Incentive Plan.
(23)	10.42	Option Agreement between Triangle Pharmaceuticals, Inc. and Daniel G. Welch, dated August 5, 2002.
(24)	10.43	License Agreement among Triangle Pharmaceuticals, Inc., Emory University and the University of Georgia Research Foundation, Inc. for compound amdoxovir (DAPD), dated March 31, 1996.
(24)	10.44	License Agreement between Triangle Pharmaceuticals, Inc. and Emory University for Coviracil (FTC), dated April 17, 1996.
(25)	10.46	Exclusive License Agreement among Triangle Pharmaceuticals, Inc., Glaxo Group Limited, The Wellcome Foundation Limited, Glaxo Wellcome Inc. and Emory University, dated May 6, 1999.
(25)	10.47	Settlement Agreement among Triangle Pharmaceuticals, Inc., Emory University, Dr. David W. Barry, Glaxo Wellcome plc, Glaxo Wellcome Inc., Glaxo Group Limited and The Wellcome Foundation Limited, dated May 6, 1999.
(25)	10.49	First Amendment to License Agreement between Triangle Pharmaceuticals, Inc. and Emory University, dated May 6, 1999.

(26)	10.50	First Amendment to License Agreement among Triangle Pharmaceuticals, Inc., Emory University and the University of Georgia Research Foundation, Inc., dated July 10, 2000.
(26)	10.51	Second Amendment to License Agreement between Triangle Pharmaceuticals, Inc. and Emory University, dated July 10, 2000.
(27)	10.54	Supply and Manufacturing Agreement between Triangle Pharmaceuticals, Inc. and Abbott Laboratories, dated July 30, 2002.
(27)	10.55	Settlement and Exclusive License Agreement among Triangle Pharmaceuticals, Inc., Shire Biochem Inc., Shire Pharmaceuticals Group plc, Emory University and the University of Georgia Research Foundation, dated August 30, 2002.
(28)	10.56	Second Amendment to License Agreement among Triangle Pharmaceuticals, Inc., Emory University and the University of Georgia Research Foundation, Inc., dated August 30, 2002.
(28)	10.62	Manufacturing Supply Agreement between Gilead World Markets, Ltd. and PPG-Sipsy S.A.S, entered into as of January 1, 2003.
(30)	10.63	Gilead Sciences, Inc. Severance Plan, as adopted effective January 29, 2003
(30)	10.64	Third Amendment to License Agreement between Triangle Pharmaceuticals, Inc. and Emory University, dated May 31, 2002.
(31)	10.65	Lease Agreement, dated June 12 th , 2003, between Registrant and GRA Associates Limited, L.L.C. for premises located at 4611 and 4615 University Drive, Durham, North Carolina
(35)	10.66	Master Clinical and Commercial Supply Agreement dated January 1, 2003 among Gilead World Markets, Ltd., Gilead Sciences, Inc. and Patheon Inc.
(35)	10.67	Toll Manufacturing Agreement dated August 1, 2003 by and among Gilead World Markets, Ltd., Gilead Sciences, Inc. and ALTANA Pharma Oranienburg GmbH
(35)	10.68	Licensing Agreement, dated as of March 31, 2000 and amended on May 9, 2000, December 4, 2001 and April 12, 2002, by and between Gilead Sciences, Inc. and Eyetech Pharmaceuticals, Inc.
(35)	10.69	Amendment No. 1 to Licensing Agreement, dated as of May 9, 2000 by and between Eyetech Pharmaceuticals, Inc. and Gilead Sciences, Inc.
(35)	10.70	Amendment No. 2 to Licensing Agreement, dated as of December 4, 2001 by and between Eyetech Pharmaceuticals, Inc. and Gilead Sciences, Inc.
(35)	10.71	Amendment No. 3 to Licensing Agreement, dated as of August 30, 2002 by and between Eyetech Pharmaceuticals, Inc. and Gilead Sciences, Inc.
(35)	10.72	Amendment No. 1 dated May 19, 2003 to Licensing Agreement dated 26 April 2002 between Glaxo Group Limited and Gilead World Markets Limited
(35)	10.73	Amendment No. 2 dated January 9, 2004 to Licensing Agreement dated 26 April 2002 between Glaxo Group Limited and Gilead World Markets Limited
(33)	10.74	Employment Agreement, dated April 26, 2004, by and between Gilead Sciences, Inc. and Mark L. Perry
(34)	10.75	Gilead Sciences, Inc. 2004 Equity Incentive Plan, as amended July 29, 2004
+	10.76	Collaboration Agreement by and among Gilead Sciences, Inc., Gilead Holdings, LLC, Bristol-Myers Squibb Company, E.R. Squibb & Sons, L.L.C., and Bristol-Myers Squibb & Gilead Sciences, LLC, dated December 17, 2004.
(36)	10.77	4 th Amendment to License Agreement between Triangle Pharmaceuticals, Inc. and Emory University, dated May 6, 1999.
	21.1	Subsidiaries of the Registrant.

23.1	Consent of Independent Registered Public Accounting Firm
24.1	Power of Attorney. Reference is made to Signature Page.
31.1	Section 302 Certification.
31.2	Section 302 Certification
32	Section 906 Certification

(1) Filed as an exhibit to Registrant's Annual Report on Form 10-K/A for the fiscal year ended December 31, 1998, and incorporated herein by reference.

(2) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 1997, and incorporated herein by reference.

(3) Filed as an exhibit to Registrant's Current Report on Form 8-K filed on October 22, 1999, and incorporated herein by reference.

(4) Filed as an exhibit to Registrant's Registration Statement on Form S-1 (No. 33-55680), as amended, and incorporated herein by reference.

(5) Filed as an exhibit to Registrant's Annual Report on Form 10-K for the fiscal year ended March 31, 1994, and incorporated herein by reference.

(6) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1996, and incorporated herein by reference.

(7) Filed as an exhibit to Registrant's Current Report on Form 8-K filed on March 9, 1999, and incorporated herein by reference.

(8) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-K for the fiscal year ended December 31, 1996, and incorporated herein by reference.

(9) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-K for the fiscal year ended December 31, 1995, and incorporated herein by reference.

(10) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-Q for the quarterly period ended September 30, 1995, and incorporated herein by reference.

(11) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-K for the fiscal year ended December 31, 1994, and incorporated herein by reference.

(12) Filed on March 22, 1991 as an exhibit to NeXstar Pharmaceuticals, Inc.'s Registration Statement on Form S-2 (File No. 33-39549), and incorporated herein by reference.

(13) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-Q for the quarterly period ended September 30, 1997, and incorporated herein by reference.

(14) Filed as an exhibit to NeXstar Pharmaceuticals, Inc.'s Form 10-Q for the quarter ended June 30, 1998, and incorporated herein by reference.

(15) Filed as an exhibit to Registrant's Form 10-K for the fiscal year ended December 31, 1998, and incorporated herein by reference.

(16) Filed as an exhibit to Registrant's Form 10-K for the fiscal year ended December 31, 2000, and incorporated herein by reference.

(17) Filed as an exhibit to Registrant's Current Report on Form 8-K filed on January 4, 2002, and incorporated herein by reference.

(18) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002, and incorporated herein by reference.

(19) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002, and incorporated herein by reference.

(20) Filed as an exhibit to Registrant's Form 10-K for the fiscal year ended December 31, 2001, and incorporated herein by reference.

(21) Filed as an exhibit to Registrant's Current Report on Form 8-K filed on December 10, 2002, and incorporated herein by reference.

(22) Filed as an exhibit to Registrant's Registration Statement on Form S-8 (No. 333-102912) filed on January 31, 2003, and incorporated herein by reference.

(23) Filed as an exhibit to Registrant's Registration Statement on Form S-8 (No. 333-102911) filed on January 31, 2003, and incorporated herein by reference.

(24) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Registration Statement on Form S-1 (No. 333-11793), as amended, and incorporated herein by reference.

(25) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 1999, and incorporated herein by reference.

(26) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2000, and incorporated herein by reference.

(27) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Current Report on Form 8-K filed on September 19, 2002, and incorporated herein by reference.

(28) Filed as an exhibit to Triangle Pharmaceuticals, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2002, and incorporated herein by reference.

(29) Filed as an exhibit to the Registrant's Current Report on Form 8-K filed on October 31, 2003, and incorporated herein by reference.

(30) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2003, and incorporated herein by reference.

(31) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2003, and incorporated herein by reference.

(32) Filed as an exhibit to Registrant's Form 10-K for the fiscal year ended December 31, 2002, and incorporated herein by reference.

(33) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, and incorporated herein by reference.

(34) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004, and incorporated herein by reference.

(35) Filed as an exhibit to Registrant's Form 10-K for the fiscal year ended December 31, 2003, and incorporated herein by reference.

(36) Filed as an exhibit to Registrant's Form 10-K for the fiscal year ended December 31, 2004, and incorporated herein by reference.

+ Certain confidential portions of this Exhibit were omitted by means of marking such portions with an asterisk (the Mark). This Exhibit has been filed separately with the Secretary of the SEC without the Mark pursuant to the Registrant's Application Requesting Confidential Treatment under Rule 24b-2 under the Securities Exchange Act of 1934

GILEAD SCIENCES, INC.

CONSOLIDATED FINANCIAL STATEMENTS

Years ended December 31, 2004, 2003 and 2002

CONTENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Gilead Sciences, Inc.

We have audited the accompanying consolidated balance sheets of Gilead Sciences, Inc. as of December 31, 2004 and 2003, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2004. Our audits also included the financial statement schedule listed at Item 15(a) of this Annual Report on Form 10-K. These financial statements and schedule are the responsibility of the management of Gilead Sciences, Inc. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Gilead Sciences, Inc. at December 31, 2004 and 2003, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2004, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Gilead Sciences, Inc.'s internal control over financial reporting as of December 31, 2004, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 4, 2005 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Palo Alto, California
March 4, 2005

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Gilead Sciences, Inc.

We have audited management's assessment, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting included in Item 9A, that Gilead Sciences, Inc. maintained effective internal control over financial reporting as of December 31, 2004, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Gilead Sciences, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of Gilead Sciences, Inc.'s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Gilead Sciences, Inc. maintained effective internal control over financial reporting as of December 31, 2004, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Gilead Sciences, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2004, based on the COSO criteria **.**

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Gilead Sciences, Inc. as of December 31, 2004 and 2003, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2004, and the related financial statement schedule and our report dated March 4 **,** 2005 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Palo Alto, California
March 4, 2005

GILEAD SCIENCES, INC.

Consolidated Balance Sheets

(in thousands, except per share amounts)

	December 31, 2004	December 31, 2003
Assets		
Current assets:		
Cash and cash equivalents	$ 280,909	$ 194,719
Marketable securities	973,129	512,281
Accounts receivable, net of allowances of $27,491 at December 31, 2004 and $25,607 at December 31, 2003	371,245	235,217
Inventories	135,991	98,102
Deferred tax assets	53,047	197,567
Prepaid expenses and other	35,373	28,012
Total current assets	1,849,694	1,265,898
Property, plant and equipment, net	223,106	198,200
Noncurrent deferred tax assets	45,446	52,494
Other noncurrent assets	37,717	38,130
	$ 2,155,963	$ 1,554,722
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 47,552	$ 35,649
Accrued clinical and preclinical expenses	7,547	11,859
Accrued compensation and employee benefits	45,469	35,772
Other accrued liabilities	132,824	97,002
Deferred revenue	19,880	5,474
Long-term obligations due within one year	181	139
Total current liabilities	253,453	185,895
Long-term deferred revenue	31,404	20,530
Long-term obligations due after one year	234	323
Convertible senior debt	—	345,000
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, par value $.001 per share, 5,000 shares authorized; none outstanding	—	—
Common stock, par value $.001 per share; 700,000 shares authorized; 448,822 and 426,506 shares issued and outstanding at December 31, 2004 and 2003, respectively	449	426
Additional paid-in capital	1,893,926	1,452,990
Accumulated other comprehensive income (loss)	(18,692)	4,507
Deferred stock compensation	(539)	(1,306)
Accumulated deficit	(4,272)	(453,643)
Total stockholders' equity	1,870,872	1,002,974
	$ 2,155,963	$ 1,554,722

See accompanying notes

GILEAD SCIENCES, INC.

Consolidated Statements of Operations

(in thousands, except per share amounts)

	Year ended December 31,		
	2004	2003	2002
Revenues:			
Product sales	$ 1,242,224	$ 836,341	$ 423,879
Royalty revenue	63,444	25,219	20,406
Contract revenue	18,953	6,304	22,505
Total revenues	1,324,621	867,864	466,790
Costs and expenses:			
Cost of goods sold	166,587	112,691	69,724
Research and development	223,552	181,764	141,867
Selling, general and administrative	302,793	233,266	174,192
Purchased in-process research and development	—	488,599	—
Asset impairment	—	10,219	—
Total costs and expenses	692,932	1,026,539	385,783
Income (loss) from operations	631,689	(158,675)	81,007
Gain (loss) on marketable securities	20,576	—	(16,048)
Make-whole payment on convertible debt redemption	(7,438)	—	—
Interest and other income, net	18,940	13,039	22,291
Interest expense	(7,345)	(21,897)	(13,853)
Income (loss) before provision for (benefit from) income taxes	656,422	(167,533)	73,397
Provision for (benefit from) income taxes	207,051	(95,530)	1,300
Net income (loss)	$ 449,371	$ (72,003)	$ 72,097
Net income (loss) per share—basic	$ 1.04	$ (0.18)	$ 0.18
Shares used in per share calculation—basic	432,000	402,210	391,086
Net income (loss) per share—diluted	$ 0.99	$ (0.18)	$ 0.17
Shares used in per share calculation—diluted	464,246	402,210	412,954

See accompanying notes

GILEAD SCIENCES, INC.

Consolidated Statement of Stockholders' Equity

(in thousands)

	Common Stock		Additional	Accumulated Other Comprehensive			Total
	Shares	Amount	Paid-In Capital	Income (Loss)	Deferred Stock Compensation	Accumulated Deficit	Stockholders' Equity
Balance at December 31, 2001	386,082	$ 386	$ 898,340	$ 7,448	$ —	$ (453,737)	$ 452,437
Net income	—	—	—	—	—	72,097	72,097
Unrealized loss on available-for-sale securities, net	—	—	—	(4,577)	—	—	(4,577)
Foreign currency translation adjustment	—	—	—	(580)	—	—	(580)
Unrealized gain on cash flow hedges, net	—	—	—	184	—	—	184
Comprehensive income							67,124
Issuances under employee stock purchase plan	684	—	6,701	—	—	—	6,701
Stock option exercises, net	8,424	10	44,675	—	—	—	44,685
Tax benefits from employee stock plans	—	—	350	—	—	—	350
Compensatory stock transactions	—	—	44	—	—	—	44
Balance at December 31, 2002	395,190	396	950,110	2,475	—	(381,640)	571,341
Net loss	—	—	—	—	—	(72,003)	(72,003)
Unrealized loss on available-for-sale securities, net	—	—	—	(4,022)	—	—	(4,022)
Foreign currency translation adjustment	—	—	—	7,040	—	—	7,040
Unrealized loss on cash flow hedges, net	—	—	—	(986)	—	—	(986)
Comprehensive loss							(69,971)
Conversion of convertible subordinated debt	20,356	20	245,372	—	—	—	245,392
Acquisition of Triangle Pharmaceuticals, Inc.	—	—	41,339	—	(3,305)	—	38,034
Issuances under employee stock purchase plan	560	—	8,238	—	—	—	8,238
Stock option exercises, net	10,400	10	75,558	—	—	—	75,568
Tax benefits from employee stock plans	—	—	132,363	—	—	—	132,363
Amortization of deferred stock compensation	—	—	—	—	1,999	—	1,999
Compensatory stock transactions	—	—	10	—	—	—	10
Balance at December 31, 2003	426,506	426	1,452,990	4,507	(1,306)	(453,643)	1,002,974
Net income	—	—	—	—	—	449,371	449,371
Unrealized loss on available-for-sale securities, net	—	—	—	(1,580)	—	—	(1,580)
Foreign currency translation adjustment	—	—	—	4,165	—	—	4,165
Unrealized loss on cash flow hedges, net	—	—	—	(25,784)	—	—	(25,784)
Comprehensive income							426,172
Conversion of convertible senior debt, net of debt issuance costs	14,677	15	339,829	—	—	—	339,844
Issuances under employee stock purchase plan	596	1	11,173	—	—	—	11,174
Stock option exercises, net	7,038	7	67,615	—	—	—	67,622
Tax benefits from employee stock plans	—	—	22,012	—	—	—	22,012
Amortization of deferred stock compensation	—	—	(5)	—	767	—	762
Compensatory stock transactions	5	—	312	—	—	—	312
Balance at December 31, 2004	448,822	$ 449	$ 1,893,926	$ (18,692)	$ (539)	$ (4,272)	$ 1,870,872

See accompanying notes

GILEAD SCIENCES, INC.

Consolidated Statements of Cash Flows

(in thousands)

	Year ended December 31,		
	2004	**2003**	**2002**
Operating activities:			
Net income (loss)	$ 449,371	$ (72,003)	$ 72,097
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation	20,265	16,533	13,189
Amortization	4,143	4,326	1,239
Purchased in-process research and development	—	488,599	—
Asset impairment	—	10,219	—
Loss on disposal of property, plant and equipment	6,195	568	143
Loss (gain) on marketable securities	(20,576)	—	16,048
Deferred tax assets	151,568	(250,061)	—
Tax benefits from employee stock plans	22,012	132,363	350
Other non-cash transactions	1,290	1,276	3,337
Changes in operating assets and liabilities:			
Accounts receivable, net	(118,843)	(92,207)	(40,628)
Inventories	(37,889)	(46,474)	(12,348)
Prepaid expenses and other assets	(18,764)	(10,806)	(8,915)
Accounts payable	11,903	6,144	5,232
Accrued liabilities	15,423	44,495	11,544
Deferred revenue	25,280	1,635	13,121
Net cash provided by operating activities	511,378	234,607	74,409
Investing activities:			
Purchases of marketable securities	(1,464,046)	(934,759)	(490,259)
Proceeds from sales and maturities of marketable securities	1,024,584	744,530	603,678
Acquisition of Triangle net assets, net of cash acquired	—	(375,507)	—
Acquisition of real estate	—	(123,000)	—
Other capital expenditures	(51,366)	(38,609)	(17,597)
Issuance of note to Triangle	—	—	(50,000)
Net cash provided by (used in) investing activities	(490,828)	(727,345)	45,822
Financing activities:			
Proceeds from issuances of common stock	78,796	83,806	51,386
Repayments of long-term debt	(137)	(1,715)	(1,414)
Proceeds from issuance of convertible senior notes, net of issuance costs	—	—	336,637
Net cash provided by financing activities	78,659	82,091	386,609
Effect of exchange rate changes on cash	(13,019)	(11,565)	(13,399)
Net increase (decrease) in cash and cash equivalents	86,190	(422,212)	493,441
Cash and cash equivalents at beginning of year	194,719	616,931	123,490
Cash and cash equivalents at end of year	$ 280,909	$ 194,719	$ 616,931
Supplemental disclosure of cash flow information:			
Interest paid	$ 13,959	$ 19,647	$ 12,657
Income taxes paid	37,064	8,779	851
Non-cash investing and financing activities			
Common stock issued upon conversion of debt	$ 344,910	$ 250,000	$ —
Reclassification of deferred debt issuance costs to additional paid-in capital upon conversion of debt	5,066	4,608	—

See accompanying notes

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Overview

Gilead Sciences, Inc. (we or Gilead) was incorporated in Delaware on June 22, 1987. We are a biopharmaceutical company that discovers, develops and commercializes therapeutics to advance the care of patients suffering from life-threatening diseases. We are a multinational company, with revenues from eight approved products and marketing operations in eleven countries. We focus our research and clinical programs on anti-infectives. Currently, we market Viread (tenofovir disoproxil fumarate), Emtriva (emtricitabine) and Truvada (emtricitabine and tenofovir disoproxil fumarate) for the treatment of HIV infection; Hepsera (adefovir dipivoxil) for the treatment of chronic hepatitis B infection; AmBisome (amphotericin B liposome for injection) for the treatment of fungal infection; and Vistide (cidofovir injection) for the treatment of CMV retinitis. Roche markets Tamiflu (oseltamivir phosphate) for the treatment of influenza, under a royalty paying collaborative agreement with us. In January 2005, Eyetech started to market Macugen (pegaptanib sodium injection) in the United States for the treatment of neovascular age-related macular degeneration, under a milestone and royalty paying collaborative agreement with us.

The accompanying consolidated financial statements include the accounts of Gilead and its wholly-owned subsidiaries. Significant intercompany transactions have been eliminated. Certain prior year amounts have been reclassified to be consistent with the current year presentation. See “Research and Development Expenses.”

Stock Splits

On March 8, 2002 and September 3, 2004, Gilead completed two-for-one stock splits, effected in the form of stock dividends, to stockholders of record as of February 14, 2002 and August 12, 2004, respectively. Accordingly, all share and per share amounts for all periods presented reflect these stock splits.

Critical Accounting Policies, Estimates and Judgments

The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of assets and liabilities. On an on-going basis, management evaluates its estimates, including those related to revenue recognition, allowance for doubtful accounts, inventories, clinical trial accruals and our tax provision. We base our estimates on historical experience and on various other market specific and other relevant assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ significantly from these estimates.

Revenue Recognition

We recognize revenue from product sales when there is persuasive evidence an arrangement exists, delivery to the customer has occurred, the price is fixed or determinable and collectibility is reasonably assured. We do not provide our customers with a general right of product return. However, we will accept returns of products in the United States that have expired for one year after their expiration, or products

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

that are deemed to be damaged or defective when received by the customer. Upon recognition of revenue from product sales, provisions are made for estimated future returns of products which may expire, government reimbursements, certain distributor fees and customer incentives, such as cash discounts for prompt payment. Estimates for government reimbursements and cash discounts are based on contractual terms and expectations regarding the utilization rates for these programs. Estimates for distributor fees are based on contractual terms. Estimates for product returns, including new products, are based on an on-going analysis of industry and historical return patterns, as well as third party data to assist us in monitoring channel inventory levels and subsequent prescriptions.

Contract revenue for research and development is recorded as performance occurs and the earnings process is completed based on the performance requirements of the contract. Nonrefundable contract fees for which no further performance obligations exist, and where there is no continuing involvement by Gilead, are recognized on the earlier of when the payments are received or when collection is reasonably assured.

Revenue from non-refundable up-front license fees and milestone payments where we continue to have involvement such as through a development collaboration or an obligation to supply product is recognized as performance occurs and our obligations are completed. In accordance with the specific terms of Gilead's obligations under these types of arrangements, revenue is recognized as the manufacturing obligation is fulfilled or ratably over the development period. Revenue associated with substantive at-risk milestones is recognized based upon the achievement of the milestones as defined in the respective agreements. Advance payments received in excess of amounts earned are classified as deferred revenue.

Royalty revenue from sales of AmBisome is recognized in the month following that in which the corresponding sales occur. Royalty revenue from sales of Hepsera, Tamiflu and Vistide is recognized when received, which is in the quarter following the quarter in which the corresponding sales occur.

Shipping and Handling Costs

Shipping and handling costs incurred for inventory purchases and product shipments are recorded in "Cost of goods sold" in the Consolidated Statements of Operations.

Research and Development Expenses

Major components of research and development (R&D) expenses consist of personnel costs, including salaries and benefits, clinical studies performed by contract research organizations (CRO's), materials and supplies, and overhead allocations consisting of various administrative and facilities related costs. Our R&D activities are also separated into three main categories: research, clinical development and pharmaceutical development. Research costs typically consist of preclinical and toxicology work. Clinical development costs include Phase 1, 2, 3 and 4 clinical trials. Pharmaceutical development costs consist of product formulation and chemical analysis.

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

We charge research and development costs, including clinical and preclinical study costs, to expense when incurred, consistent with Statement of Financial Accounting Standards (SFAS) No. 2, *Accounting for Research and Development Costs* . These costs are a significant component of R&D expenses. Most of our clinical and preclinical studies are performed by third party CRO's. We accrue costs for clinical studies performed by CRO's on a straight-line basis over the service periods specified in the contracts and adjust our estimates, if required, based upon our on-going review of the level of effort and costs actually incurred by the CRO. Initially we estimate that the work performed under the contracts occurs ratably over the service periods to the expected milestone, event or total contract completion date. The expected completion dates are estimated based upon the terms of the contracts and past experience with similar contracts. We monitor levels of performance under each contract including the extent of patient enrollment and other activities through communications with our CRO's, and we adjust our estimates, if required, on a quarterly basis so that our expenses reflect the actual effort expended by each CRO.

All of our material CRO contracts are terminable by us upon written notice and Gilead is generally only liable for actual effort expended by the CRO at any point in time during the contract, regardless of payment status. Amounts paid in advance of services being performed will be refunded if a contract is terminated. Some contracts include additional termination payments that become due and payable only if Gilead terminates the contract. Such additional termination payments are only recorded if a contract is terminated.

During 2004, in order to better reflect the nature of European Phase 4 clinical trials, Gilead began recording these costs as R&D expenses. Such amounts were previously classified as selling, general and administrative expenses in our consolidated statements of operations. In order to be consistent with the current period presentation, $16.9 million and $7.1 million of expenses were reclassified from selling, general and administrative to research and development expenses, for the years ended December 31, 2003 and 2002, respectively.

Advertising Expenses

We expense the costs of advertising, including promotional expenses, as incurred. Advertising expenses were $50.5 million in 2004, $43.4 million in 2003 and $39.3 million in 2002.

Stock-Based Compensation

In accordance with the provisions of SFAS No. 123, *Accounting For Stock-Based Compensation* , as amended by SFAS No. 148 *Accounting for Stock-Based Compensation—Transition and Disclosure* (SFAS 123) , we have elected to continue to follow Accounting Principles Board Opinion (APB) No. 25, *Accounting For Stock Issued To Employees* , and Interpretation No. 44 (FIN 44), *Accounting for Certain Transactions Involving Stock Compensation—an Interpretation of APB Opinion No. 25*, in accounting for our employee stock option plans. Under APB 25, if the exercise price of Gilead's employee and director stock options equals or exceeds the fair value of the underlying stock on the date of grant, no compensation expense is recognized. Although we have elected to follow the intrinsic value method prescribed by APB 25, we will evaluate our approach to accounting for stock options in light of recent industry and regulatory developments.

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

The table below presents the net income (loss) and basic and diluted net income (loss) per share if compensation cost for the Gilead, NeXstar Pharmaceuticals, Inc. (NeXstar) and Triangle stock option plans and the employee stock purchase plan (ESPP) had been determined based on the estimated fair value of awards under those plans on the grant or purchase date in accordance with SFAS 123 (in thousands, except per share amounts):

	Year ended December 31,		
	2004	2003	2002
Net income (loss)—as reported	$ 449,371	$ (72,003)	$ 72,097
Add: Stock-based employee compensation expense included in reported net income (loss), net of related tax effects	465	1,219	44
Deduct: Total stock-based employee compensation expense determined under the fair value based method for all awards, net of related tax effects	(80,843)	(61,429)	(72,137)
Pro forma net income (loss)	$ 368,993	$ (132,213)	$ 4
Net income (loss) per share:			
Basic-as reported	$ 1.04	$ (0.18)	$ 0.18
Basic-pro forma	$ 0.85	$ (0.33)	$ 0.00
Diluted-as reported	$ 0.99	$ (0.18)	$ 0.17
Diluted-pro forma	$ 0.81	$ (0.33)	$ 0.00

Fair values of awards granted under the stock option plans and ESPP were estimated at grant or purchase dates using a Black-Scholes option valuation model. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options, which have no vesting 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, other models that may be developed in the future, may generate fair values that differ from those calculated based on Black-Scholes. To calculate the estimated fair value of the awards, we used the multiple option approach and the following assumptions:

	Year ended December 31,		
	2004	2003	2002
Expected life in years (from vesting date):			
Stock options	1.86	1.84	1.86
ESPP	1.48	1.32	1.31
Discount rate:			
Stock options	3.0%	2.8%	3.9%
ESPP	1.9%	1.8%	3.0%
Volatility	47%	78%	82%
Expected dividend yield	0%	0%	0%

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

In the fourth quarter of 2003, we refined our volatility assumptions used to arrive at a fair value for our stock awards. For purposes of calculating the expected volatility rate, we began using a time period that better reflected our current stage of development, the length of time that we have been a public company and several drug approvals over the past few years which have enabled us to achieve positive cash flow from operations. We believe these estimated volatility rates better reflect the expected volatility of our common stock in the future. For 2004, the most recent three-year time period was used for purposes of calculating the expected volatility. For 2003, a two-year time period was used to derive a weighted average volatility of 52% for the fourth quarter. The weighted average volatility of the first three quarters of 2003 was 80%.

The weighted average estimated fair value of ESPP shares purchased was $18.74 for 2004, $9.82 for 2003 and $9.27 for 2002.

Earnings (Loss) Per Share

Basic earnings (loss) per share is calculated based on the weighted-average number of common shares outstanding during the year. Diluted earnings (loss) per share is calculated based on the weighted-average number of common shares and other dilutive securities. Dilutive potential common shares resulting from the assumed exercise of outstanding stock options and equivalents are determined based on the treasury stock method. Dilutive potential common shares resulting from the assumed conversion of convertible notes are determined based on the if-converted method. The following table is a reconciliation of the numerator and denominator used in the calculation of basic and diluted earnings (loss) per share (in thousands):

	Year ended December 31,		
	2004	2003	2002
Numerator:			
Net income (loss) used in calculation of basic earnings (loss) per share	$ 449,371	$ (72,003)	$ 72,097
Interest expense and make-whole payment on convertible debt redemption	9,160	—	—
Net income (loss) used in calculation of diluted earnings (loss) per share	$ 458,531	$ (72,003)	$ 72,097
Denominator:			
Weighted-average common shares outstanding used in calculation of basic earnings (loss) per share	432,000	402,210	391,086
Effect of dilutive securities:			
Stock options and equivalents	19,341	—	21,868
Convertible debt	12,905	—	—
Weighted-average common shares outstanding used in calculation of diluted earnings (loss) per share	464,246	402,210	412,954

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Diluted net loss per share for 2003 excludes the pro-rated effect of the $250.0 million 5% convertible subordinated notes, which would convert to approximately 19.7 million shares, the effect of the $345.0 million 2% convertible senior notes, which would convert to approximately 14.7 million shares, and outstanding stock options and equivalents of 19.8 million shares, as their effects were antidilutive. Diluted net income per share for 2002 excludes the effects of the $250.0 million 5% convertible subordinated notes, which would convert to approximately 20.4 million shares and the $345.0 million 2% convertible senior notes, which would convert to approximately 14.7 million shares, as the effects of their assumed conversions were antidilutive.

Cash and Cash Equivalents

We consider highly liquid investments with insignificant interest rate risk and a remaining maturity of three months or less at the purchase date to be cash equivalents. We may enter into overnight repurchase agreements under which we purchase securities with an obligation to resell them the following day. Securities purchased under agreements to resell are recorded at face value and reported as cash and cash equivalents. Under our investment policy, we may enter into repurchase agreements (repos) with major banks and authorized dealers provided that such repos are collateralized by U.S. government securities with a fair value of at least 102% of the fair value of securities sold to Gilead. Other eligible instruments under our investment policy which are included in cash equivalents include commercial paper, money market funds and other bank obligations.

Marketable and Nonmarketable Securities

We determine the appropriate classification of our marketable securities, which consist solely of debt securities, at the time of purchase and reevaluate such designation at each balance sheet date. All of our marketable securities are classified as available-for-sale and carried at estimated fair values and reported in either cash equivalents or marketable securities. At December 31, 2004, cash and cash equivalents include $137.7 million of securities designated as available-for-sale ($116.0 million at December 31, 2003). Unrealized gains and losses on available-for-sale securities are excluded from earnings and reported as a separate component of stockholders' equity. Interest and other income, net, includes interest, dividends, amortization of purchase premiums and discounts, and realized gains and losses on sales of securities. The cost of securities sold is based on the specific identification method. We regularly review all of our investments for other-than-temporary declines in fair value. When we determine that the decline in fair value of an investment below our accounting basis is other-than-temporary, we reduce the carrying value of the securities we hold and record a loss in the amount of such decline. No such reductions have been required during the past three years.

As a result of entering into collaborations, from time to time, Gilead may hold stock in non-public companies. We record these nonmarketable securities at cost in other noncurrent assets, less any amounts for other-than-temporary impairment. We regularly review our investments for indicators of impairment. Investments in nonmarketable securities are not material for the periods presented and we have not recognized any other-than-temporary declines during the past three years.

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Concentrations of Risk

We are subject to credit risk from our portfolio of cash equivalents and marketable securities. By policy, we limit amounts invested in such securities by duration, industry group, investment type and issuer, except for securities issued by the U.S. government. We are not exposed to any significant concentrations of credit risk from these financial instruments. The goals of our investment policy, in order of priority, are as follows: safety and preservation of principal and diversification of risk; liquidity of investments sufficient to meet cash flow requirements; and competitive after-tax rate of return.

We are also subject to credit risk from our accounts receivable related to product sales. A significant amount of our trade accounts receivable arises from product sales of Viread in the United States and Europe. In certain countries where payments are typically slow, primarily Greece, Italy, Portugal and Spain, our accounts receivable balances are significant. In most cases, these slow payment practices reflect the pace at which governmental entities reimburse our customers. This, in turn, may increase the financial risk related to certain of our customers. Sales to customers in countries that tend to be relatively slow paying have in the past increased, and in the future may further increase, the average length of time that accounts receivable are outstanding. At December 31, 2004, our past due accounts receivable for Greece, Italy, Portugal and Spain totaled approximately $166.6 million, of which approximately $100.5 million was more than 120 days past due based on the contractual terms of the receivables. At December 31, 2003, past due receivables for these countries were $102.7 million, of which approximately $59.0 million was more than 120 days past due. To date, we have not experienced significant losses with respect to the collection of our accounts receivable and believe that all of our past due accounts receivable, net of allowances, as reflected in the consolidated balance sheet, are collectible. We perform credit evaluations of our customers' financial condition and generally have not required collateral.

Many of the materials that we utilize in our operations are made at only one facility. For example, we depend on single suppliers for high quality amphotericin B, distearoylphosphatidyl-choline and high quality cholesterol, each of which is used in the manufacture of AmBisome. As well, we currently only have one contract manufacturer qualified to manufacture Truvada tablets. If supplies from our suppliers were interrupted for any reason, we may be unable to ship Viread, AmBisome, Hepsera, Emtriva, Vistide or Truvada, or to supply any of our products in development for clinical trials.

Accounts Receivable

Trade accounts receivable are recorded net of allowances for cash discounts for prompt payment, doubtful accounts, government chargebacks and sales returns. Estimates for cash discounts, government chargebacks and sales returns are based on contractual terms, historical trends and expectations regarding the utilization rates for these programs. Estimates for our allowance for doubtful accounts is determined based on existing contractual obligations, historical payment patterns of our customers and individual customer circumstances, an analysis of days sales outstanding by customer and geographic region, and a review of the local economic environment and its potential impact on government funding and reimbursement practices. Historically, the level of uncollectible accounts receivable that has been written off, has been insignificant and consistent with management's expectations.

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Inventories

Inventories are recorded at the lower of cost or market, with cost determined on a first-in, first-out basis. We periodically review the composition of inventory in order to identify obsolete, slow-moving or otherwise unsaleable items. If unsaleable items are observed and there are no alternate uses for the inventory, we will record a write-down to net realizable value in the period that the impairment is first recognized. Historically, inventory write-downs have been insignificant and consistent with management's expectations.

Property, Plant and Equipment

Property, plant and equipment is stated at cost less accumulated depreciation and amortization. Depreciation and amortization are recognized using the straight-line method. Land is not depreciated. Estimated useful lives are as follows (in years):

Description	Estimated Useful Life
Buildings and improvements	20
Laboratory and manufacturing equipment	4-10
Office and computer equipment	2-6
Leasehold improvements	Life of related lease

Office and computer equipment includes capitalized computer software. All of our capitalized software is purchased; we have no internally developed computer software. Leasehold improvements and capitalized leased equipment are amortized over the shorter of the lease term or the asset's useful life. Amortization of capitalized leased equipment is included in depreciation expense. Capitalized interest on construction in progress is included in property, plant and equipment. Interest capitalized in 2004, 2003 and 2002 was insignificant.

Intangible Assets

Intangible assets with definite lives are amortized over their estimated useful lives and are reviewed for impairment when facts or circumstances suggest that the carrying value of these assets may not be recoverable. Our in-place lease intangible asset is being amortized over the remaining period of the related lease term as discussed in Note 4.

Impairment of Long-Lived Assets

The carrying value of long-lived assets is reviewed on a regular basis for the existence of facts or circumstances both internally and externally that may suggest impairment. Specific potential indicators of impairment include:

- a significant decrease in the fair value of an asset;
- a significant change in the extent or manner in which an asset is used or a significant physical change in an asset;

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

- a significant adverse change in legal factors or in the business climate that affects the value of an asset;
- an adverse action or assessment by the U.S. Food and Drug Administration or another regulator;
- an accumulation of costs significantly in excess of the amount originally expected to acquire or construct an asset; and
- operating or cash flow losses combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with an income-producing asset.

Should there be an indication of impairment, we will test for recoverability by comparing the estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition to the carrying amount of the asset. In estimating these future cash flows, assets and liabilities are grouped at the lowest level for which there are identifiable cash flows that are largely independent of the cash flows generated by other such groups. If the undiscounted future cash flows are less than the carrying amount of the asset, an impairment loss, measured as the excess of the carrying value of the asset over its estimated fair value, will be recognized. The cash flow estimates used in such calculations are based on management's best estimates, using appropriate and customary assumptions and projections at the time.

Foreign Currency Translation, Transactions and Contracts

Adjustments resulting from translating the financial statements of our foreign subsidiaries into U.S. dollars are excluded from the determination of net income (loss) and are accumulated in a separate component of stockholders' equity. Net foreign exchange transaction gains or losses are reported as selling, general and administrative expenses in the consolidated statements of operations. Such realized losses were $4.3 million in 2004 and $2.2 million in 2003 and such realized gains were $0.6 million in 2002.

We hedge certain of our foreign currency exposures related to outstanding trade accounts receivable and forecasted product sales with foreign exchange forward contracts. In general, the market risks of these contracts are offset by corresponding gains and losses on the transactions being hedged. Our exposure to credit risk from these contracts is a function of changes in interest and currency exchange rates and, therefore, varies over time. Gilead limits the risk that counterparties to these contracts may be unable to perform by transacting only with major U.S. banks. We also limit risk of loss by entering into contracts that provide for net settlement at maturity. Therefore, our overall risk of loss in the event of a counterparty default is limited to the amount of any unrecognized and unrealized gains on outstanding contracts (i.e., those contracts that have a positive fair value) at the date of default. We do not enter into speculative foreign currency transactions and do not write options. We presently do not hedge our net investment in any of our foreign subsidiaries. In accounting for hedges of net monetary assets or liabilities, we record the changes in the fair value in selling, general and administrative expense, as these derivative instruments are not designated as hedges under SFAS Nos. 133 and 138, *Accounting for Derivative Instruments and Hedging Activities* , (collectively referred to as SFAS 133) .

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

We selectively hedge anticipated currency exposures by purchasing forward contracts to hedge anticipated product sales over the next year or less, which are designated as cash flow hedges under SFAS 133. The unrealized gains and losses on the underlying forward contracts are recorded in other comprehensive income and recognized in earnings when the forecasted transaction occurs. At December 31, 2004 and December 31, 2003, we have net unrealized losses on our open foreign exchange forward contracts of $26.5 million and $14.5 million, respectively. Losses on revenue hedges reduced product sales by $2.5 million in 2004, by $2.8 million in 2003, and by $1.0 million in 2002.

We had notional amounts on forward exchange contracts outstanding of $580.7 million at December 31, 2004 and $405.0 million at December 31, 2003. All contracts have maturities of one year or less. See Note 2 for a further discussion of derivative financial instruments.

Fair Value of Financial Instruments

Our financial instruments consist principally of cash and cash equivalents, marketable securities, accounts receivable, certain other non-current assets, forward foreign exchange contracts, accounts payable and long-term obligations. Cash and cash equivalents, marketable securities and forward foreign exchange contracts that hedge accounts receivable are reported at their respective fair values on the balance sheet. Forward foreign exchange contracts that hedge firmly committed purchases and forecasted sales are recorded at fair value, net of the related deferred gain or loss, resulting in a reported net balance of zero. Gilead called its 2% convertible senior notes for redemption in October 2004 and converted them into 14,676,952 million shares of Gilead common stock in November 2004. At December 31, 2003, the fair value of the convertible senior notes was $472.6 million and its carrying value was $345.0 million. Gilead called its 5% convertible subordinated notes for redemption in November 2003 and converted them into 20,356,232 million shares of Gilead common stock in December 2003. The fair value of the convertible senior notes at December 31, 2003 was determined by obtaining quotes from a market maker for the notes. We believe the remaining financial instruments are reported on the consolidated balance sheet at amounts that approximate current fair values.

Recent Accounting Pronouncement

In December 2004, the FASB issued SFAS No. 123 (revised 2004), *Share-Based Payment* (SFAS 123R), which is a revision of SFAS 123. SFAS 123R supercedes APB 25 and amends SFAS 95, *Statement of Cash Flows* . SFAS 123R requires all share-based payments to employees and directors, including grants of stock options, to be recognized in the statement of operations based on their fair values, beginning with the first interim or annual period after June 15, 2005, with early adoption permitted. The pro forma disclosures previously permitted under SFAS 123 no longer will be an alternative to financial statement recognition. We expect to adopt SFAS 123R in our third quarter of fiscal 2005, beginning July 1, 2005. Under SFAS 123R, we must determine the appropriate fair value model to be used for valuing share-based payments, the amortization method for compensation cost and the transition method to be used at date of adoption. The transition methods include prospective and retroactive adoption options. Under the retroactive options, prior periods may be restated either as of the beginning of the year of adoption or for all periods presented. The prospective method requires that compensation expense be recorded for all unvested stock options and restricted stock at the beginning of the first quarter

1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

of adoption of SFAS 123R, while the retroactive methods would record compensation expense for all unvested stock options and restricted stock beginning with the first period restated. We are currently evaluating the requirements of SFAS 123R as well as option valuation methodologies related to our employee and director stock options and employee stock purchase plan. Although we have not yet determined the method of adoption or the effect of adopting SFAS 123R, we expect that the adoption of SFAS 123R will have a material impact on our consolidated results of operations and earnings per share. The impact of adoption of SFAS 123R cannot be predicted at this time because it will depend on, among other things, the levels of share-based payments granted in the future, the method of adoption and the option valuation method used. SFAS 123R also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as a financing cash flow, rather than as an operating cash flow as required under current literature. This requirement will reduce net operating cash flows and increase net financing cash flows in periods after adoption. While we cannot estimate what those amounts will be in the future (because they depend on, among other things, when employees and directors exercise stock options), the amount of operating cash flows recognized in prior periods related to tax deductions were $22.0 million, $132.3 million and $0.4 million in 2004, 2003 and 2002, respectively. Current estimates of option values using the Black-Scholes method may not be indicative of results from valuation methodologies ultimately adopted by Gilead.

2. DERIVATIVE FINANCIAL INSTRUMENTS

A ll derivatives are recognized as either assets or liabilities measured at fair value. We enter into foreign currency forward contracts to hedge against changes in the fair value of significant monetary assets and liabilities denominated in a non-functional currency. If the derivative is designated as, and meets the definition of, a fair value hedge, the changes in the fair value of the derivative and of the hedged item are recognized in earnings.

We enter into foreign currency forward contracts, generally with maturities of 12 months or less, to hedge future cash flows related to forecasted product sales in foreign denominated currencies. These derivative instruments are employed to eliminate or minimize certain foreign currency exposures that can be confidently identified and quantified. Hedges related to forecasted foreign currency product sales designated and documented at the inception of the respective hedge are designated as cash flow hedges and evaluated for effectiveness monthly. As the terms of the forward contract and the underlying transaction are matched at inception, forward contract effectiveness is calculated by comparing the fair value of the contract to the estimated change in the fair value of the underlying hedged item. The effective component of the hedge is recorded in accumulated other comprehensive income (see Note 15). Substantially all values reported in accumulated other comprehensive loss at December 31, 2004 will be reclassified to earnings within 12 months. Any residual changes in fair value of the instruments (including those resulting from cancellation or de-designation of hedge contracts) or other ineffectiveness are recognized immediately in selling, general and administrative expense. The impact of ineffectiveness during 2004, 2003 and 2002 was not significant to the consolidated statements of operations.

During 2004, 2003 and 2002, losses of $6.8 million, $5.1 million and $0.4 million on hedging contracts were recognized in the consolidated statements of operations, respectively.

2. DERIVATIVE FINANCIAL INSTRUMENTS (Continued)

As a result of entering into a collaboration arrangement, Gilead held warrants to purchase stock in a non-public company, which completed its initial public offering in January 2004 (see Notes 6 and 10). These warrants were exercised in February 2004. The warrants had a net exercise feature and pursuant to SFAS 133, were classified as derivative instruments in other noncurrent assets at December 31, 2003.

3. ACQUISITION OF TRIANGLE PHARMACEUTICALS, INC.

On January 23, 2003, we completed the acquisition of all of the net assets of Triangle to expand our antiviral pipeline. Triangle was a development stage company with a particular focus on potential therapies for HIV, including AIDS, and the hepatitis B virus (HBV). Triangle's portfolio consisted of several drug candidates in clinical trials, including Emtriva (emtricitabine) for the treatment of HIV infection, emtricitabine for the treatment of chronic hepatitis B, amdoxovir for the treatment of HIV infection and clevudine for the treatment of chronic hepatitis B. In July 2003, the U.S. Food and Drug Administration (FDA) granted marketing approval for Emtriva for the treatment of HIV and in October 2003, the European Commission granted Marketing Authorisation for Emtriva in all fifteen member states of the European Union.

The Triangle acquisition has been accounted for as an acquisition of assets rather than as a business combination in accordance with the criteria outlined in Emerging Issues Task Force 98-3. Triangle was a development stage company that had not commenced its planned principal operations. It lacked the necessary elements of a business because it did not have completed products and, therefore, no ability to access customers. The results of operations of Triangle since January 23, 2003 have been included in our consolidated financial statements and primarily consist of research and development expenses and to a lesser extent, selling, general and administrative expenses.

In December 2002, as part of the arrangements contemplated by the proposed acquisition of Triangle by Gilead, a $50.0 million loan was extended to Triangle for working capital and other corporate purposes. Triangle issued to Gilead a 7.50% unsecured convertible promissory note. Upon completion of the acquisition in January 2003, this loan was eliminated in our consolidated financial statements.

The aggregate purchase price was $525.2 million, including cash paid of $463.1 million for all of the outstanding stock, the fair value of stock options assumed of $41.3 million, direct transaction costs of $14.2 million and employee related costs of $6.6 million.

As part of the purchase, we established a workforce reduction plan and also assumed obligations under various change of control agreements. As of the acquisition date, approximately $6.2 million of employee termination costs and change of control obligations had been recorded as a liability to be paid out over a period of approximately two years. At December 31, 2004, approximately $779,000 remained as a liability.

3. ACQUISITION OF TRIANGLE PHARMACEUTICALS, INC. (Continued)

The following table summarizes the purchase price allocation at January 23, 2003 (in thousands):

Net tangible assets	$ 28,700
Assembled workforce	4,590
Deferred compensation	3,305
In-process research and development	488,599
	$525,194

The $28.7 million of net tangible assets includes assumed liabilities of $20.8 million. The $4.6 million value assigned to the assembled workforce was being amortized over three years, the estimated useful life of the asset. The deferred compensation represents the intrinsic value of the unvested stock options assumed in the transaction and will be amortized over the remaining vesting period of the options, which extends through January 2007.

Upon the reversal of the deferred tax asset valuation allowance in the fourth quarter of 2003, the remaining $3.2 million assembled workforce asset was eliminated (see Note 17).

3. ACQUISITION OF TRIANGLE PHARMACEUTICALS, INC. (Continued)

Approximately $488.6 million of the purchase price was allocated to purchased in-process research and development and represented the fair value of Triangle's incomplete research and development programs that had not yet reached technological feasibility and had no alternative future use as of the acquisition date. A summary of these programs at the acquisition date, and updated for subsequent developments, is as follows:

Program	Description	Status of Development	Estimated Acquisition Date Fair Value (in millions)
Emtricitabine for HIV	A nucleoside analogue that has been shown to be an inhibitor of HIV replication in patients.	Four phase 3 studies were completed prior to the acquisition date. U.S. marketing approval received from the FDA in July 2003 for Emtriva and European Union approval received from the European Commission in October 2003.	$ 178.8
Emtricitabine/ Tenofovir DF Fixed Dose Combination for HIV Therapy	A fixed-dose co-formulation of tenofovir and emtricitabine.	As of the acquisition date, work had not commenced on the potential co-formulation except to the extent that work on emtricitabine as a single agent was progressing. In March 2004, applications for marketing approval were submitted in the United States and European Union and in August 2004 marketing approval in the United States was received from the FDA for Truvada, the fixed-dose co-formulation of tenofovir and emtricitabine. Marketing approval in the European Union was received in February 2005.	$ 106.4
Amdoxovir for HIV	A purine dioxolane nucleoside that may offer advantages over other marketed nucleosides because of its activity against drug resistant viruses as exhibited in patients with HIV infection.	This program was in Phase 2 trials at acquisition date. In 2004, we terminated the licensing agreement with Emory University and the University of Georgia Research Foundation, Inc. and development was discontinued.	$ 114.8
Clevudine for HBV	A pyrimidine nucleoside analogue that has been shown to be an inhibitor of HBV replication in patients chronically infected with HBV.	This program was in Phase 1/2 trials at acquisition date. In August 2003, the licensing agreement with Bukwang Pharm. Ind. Co., Ltd was terminated and development was discontinued.	$ 58.8
Emtricitabine for HBV	An inhibitor of HBV replication in patients chronically infected with HBV.	One phase 3 trial has been completed as of December 31, 2004.	$ 29.8

3. ACQUISITION OF TRIANGLE PHARMACEUTICALS, INC. (Continued)

The value of the acquired in-process research and development was determined by estimating the related future net cash flows between 2003 and 2020 using a present value risk adjusted discount rate of 15.75%. This discount rate is a significant assumption and is based on our estimated weighted average cost of capital adjusted upward for the risks associated with the projects acquired. The projected cash flows from the acquired projects were based on estimates of revenues and operating profits related to the projects considering the stage of development of each potential product acquired, the time and resources needed to complete the development and approval of each product, the life of each potential commercialized product and associated risks including the inherent difficulties and uncertainties in developing a drug compound, including obtaining FDA and other regulatory approvals, and risks related to the viability of and potential alternative treatments in any future target markets.

4. ACQUISITION OF REAL ESTATE

In September 2003, we completed the purchase of our Foster City, California campus for approximately $123.0 million in cash. This purchase included 16 buildings, totaling 496,000 square feet of office and laboratory space.

In accordance with SFAS No. 141, *Business Combinations* and SFAS No. 142, *Goodwill and Other Intangible Assets* , the purchase price was allocated between land, buildings and existing in-place leases based on their estimated relative fair values. Land and buildings were recorded at $45.1 million and $71.4 million, respectively. The fair value of the buildings will be depreciated over their remaining economic life estimated to be 20 years. We used the market approach to value the existing leases we acquired and recorded an intangible asset of approximately $6.5 million that will be amortized on a straight-line basis to net rental income over approximately two years, the remaining term of the leases. Accumulated amortization on the intangible asset was $3.5 million and $0.8 million as of December 31, 2004 and December 31, 2003, respectively. The net rental income we generate from these leases, after amortization of the intangible asset, is included in interest and other income, net, and was approximately $1.4 million for the year ended December 31, 2004 and $0.4 million for the year ended December 31, 2003. Future net rental income to be received under existing leases is $5.0 million for 2005 and $0.4 million for 2006, prior to amortization of our in-place lease asset.

5. ASSET IMPAIRMENT

During the fourth quarter of 2003, we recorded an asset impairment charge of $10.2 million on certain of our long-lived assets, primarily leasehold improvements and manufacturing and laboratory equipment, which we have classified as held for use. This non-cash charge was driven by the decision to terminate our liposomal research and development activities in San Dimas and discontinue the DaunoXome (daunorubicin citrate liposome injection) product line. The impairment was based on our analysis of the undiscounted cash flows to be generated from the affected assets as compared to their carrying value. As the carrying value exceeded the related estimated undiscounted cash flows, we wrote the carrying value of the long-lived assets down to their estimated fair value in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (SFAS 144). Estimated fair value was derived using an expected cash flow approach.

5. ASSET IMPAIRMENT (Continued)

In 2004, subsequent to our decision to discontinue the DaunoXome product line, we received unanticipated requests in Europe asking Gilead to reconsider selling DaunoXome. As a result of these requests, management decided to continue selling this product in certain countries and we are still evaluating our supply and sales strategy with respect to DaunoXome. In accordance with SFAS 144, the write down in 2003 of the assets which continue to be used in the DaunoXome product line established a new cost basis for such assets that has not been adjusted for these new facts and circumstances.

6. GAIN (LOSS) ON MARKETABLE SECURITIES

Eyetech Pharmaceuticals

In March 2000, we entered into an agreement with Eyetech Pharmaceuticals, Inc. (Eyetech) relating to our proprietary aptamer EYE001, currently known as Macugen ® (pegaptanib sodium injection). Pursuant to this agreement, we received a warrant to purchase 791,667 shares of Eyetech series B convertible preferred stock, exercisable at a price of $6.00 per share. In January 2004, Eyetech completed an initial public offering of its common stock at which time we adjusted the carrying value of the warrant to its estimated fair value, resulting in a gain of $20.6 million which is included in our consolidated statement of operations for the year ended December 31, 2004 in gain (loss) on marketable securities. The fair value of the warrant was estimated using the Black-Scholes valuation model with a volatility rate of 50% and a discount rate of 2.8%. At the end of the first quarter of 2004, we exercised the warrant on a net basis using shares of Eyetech common stock as consideration for the exercise price and subsequently held 646,841 shares of Eyetech common stock. In the second quarter of 2004, we sold all of the Eyetech shares we held and realized a gain of approximately $2.3 million, which is included in interest and other income, net, in our consolidated statement of operations for the year ended December 31, 2004.

OSI Pharmaceuticals

In July 2002, Gilead sold all of its remaining shares of OSI common stock for approximately $22.0 million. These shares were partial consideration for the sale of our oncology assets to OSI in December 2001, at which time they were recorded at a fair market value of approximately $38.0 million. In connection with the sale of these remaining shares, we recognized a non-operating loss of approximately $16.0 million that is reflected in our consolidated statement of operations for the year ended December 31, 2002 in gain (loss) on marketable securities .

7. AVAILABLE-FOR-SALE SECURITIES

The following is a summary of available-for-sale securities recorded in cash equivalents or marketable securities in our consolidated balance sheets. Estimated fair values of available-for-sale securities are based on prices obtained from commercial pricing services (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
December 31, 2004				
U.S. treasury securities and obligations of U.S. government agencies	$ 501,725	$ 7	$ (2,300)	$ 499,432
Corporate debt securities	185,441	55	(554)	184,942
Asset-backed securities	267,599	72	(1,365)	266,306
Other debt securities	160,158	—	—	160,158
Total	$ 1,114,923	$ 134	$ (4,219)	$ 1,110,838
December 31, 2003				
U.S. treasury securities and obligations of U.S. government agencies	$ 167,825	$ 304	$ (5)	$ 168,124
Corporate debt securities	104,549	256	(15)	104,790
Asset-backed securities	208,557	165	(299)	208,423
Other debt securities	146,901	—	—	146,901
Total	$ 627,832	$ 725	$ (319)	$ 628,238

Other debt securities consist primarily of money market funds. At December 31, 2004 and December 31, 2003, these securities had a net unrealized gain (loss) of approximately $0.5 million and ($0.8) million, respectively.

The following table presents certain information related to sales of available-for-sale securities (in thousands):

	Year ended December 31,		
	2004	2003	2002
Proceeds from sales	$ 688,678	$ 579,362	$ 422,168
Gross realized gains on sales	$ 575	$ 1,897	$ 3,492
Gross realized losses on sales	$ (1,044)	$ (1,120)	$ (16,705)

At December 31, 2004, $558.6 million of our portfolio of marketable securities (which excludes $266.3 million of asset-backed securities) has a contractual maturity of less than one year and $286.0 million of the portfolio has a contractual maturity greater than one year but less than three years. None of the estimated maturities of our asset-backed securities exceed three years. As of December 31, 2004, we did not have any marketable securities that were in a continuous unrealized loss position for more than one year.

8. BALANCE SHEET DETAIL (in thousands)

	December 31, 2004	December 31, 2003
Inventories:		
Raw materials	$ 93,942	$ 54,178
Work in process	11,103	11,775
Finished goods	30,946	32,149
Total	$ 135,991	$ 98,102
Property, plant and equipment, net:		
Buildings and improvements (including leasehold improvements)	$ 177,704	$ 146,445
Laboratory and manufacturing equipment	40,162	35,819
Office and computer equipment	39,537	34,193
Capitalized leased equipment	15,488	16,333
Construction in-progress	11,968	10,292
	284,859	243,082
Less accumulated depreciation and amortization	(106,809)	(89,938)
Subtotal	178,050	153,144
Land	45,056	45,056
Total	$ 223,106	$ 198,200
Accrued compensation and employee benefits:		
Accrued bonuses	$ 17,827	$ 13,313
Other accrued compensation and employee benefits	27,642	22,459
Total	$ 45,469	$ 35,772
Other accrued liabilities:		
Accrued Medicaid rebates	$ 37,139	$ 22,097
Fair value of forward foreign currency contracts	27,963	15,096
Value added taxes payable	12,891	9,441
Income taxes payable	8,698	13,305
Accrued royalty expenses	14,490	6,499
Other liabilities	31,643	30,564
Total	$ 132,824	$ 97,002

9. JOINT VENTURE WITH BRISTOL-MYERS SQUIBB

In December 2004, we entered into a collaboration with Bristol-Myers Squibb Company (BMS) to develop and commercialize the fixed-dose combination of Gilead's Truvada and BMS's Sustiva® (efavirenz) in the United States. Structured as a joint venture, Gilead and BMS formed the limited liability company, Bristol-Myers Squibb & Gilead Sciences, LLC. Under the terms of the collaboration, Gilead and BMS granted royalty-free sublicenses to the joint venture for the use of their respective company-owned technologies and, in return, were granted a license by the joint venture to use any intellectual property that results from the collaboration. The ownership interests of the joint venture by Gilead and BMS, which

9. JOINT VENTURE WITH BRISTOL-MYERS SQUIBB (Continued)

reflect their respective economic interests, will be based on the fraction of the estimated net selling price of the fixed-dose combination product attributable to Truvada and Sustiva, respectively, and will be adjusted on an annual basis. Since the net selling price for Truvada may change over time relative to the net selling price of Sustiva, both Gilead's and BMS's respective economic interests in the joint venture may vary annually.

Gilead has primary responsibility for clinical development activities and regulatory filings relating to any new products resulting from the collaboration, and BMS and Gilead will share marketing and sales efforts (both parties will provide equivalent sales force efforts for a minimum number of years). The daily operations of the joint venture are governed by four primary joint committees. Gilead will be responsible for accounting, financial reporting and product distribution for the joint venture. Both parties agreed to provide their respective bulk active pharmaceutical ingredients to the joint venture at their approximate market values.

The joint venture's total equity investment at risk is not expected to be sufficient to allow it to finance its operational activities without the ongoing funding of Gilead and BMS. Further, the joint venture has other attributes that we believe result in it representing a variable interest entity as set forth in FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (FIN 46R). We expect to consolidate the results of operations and financial position of the joint venture, as we have concluded that we are the primary beneficiary, the party that will absorb a majority of the joint venture's expected losses. Although we are the primary beneficiary, the legal structure of the joint venture limits the recourse that its creditors will have over the general credit or assets of Gilead. There was no financial information to consolidate in 2004 as operations of the joint venture had not yet begun as of December 31, 2004 and no capital contributions had been made by Gilead or BMS. Beginning in 2005, we expect to consolidate the joint venture and record the minority interest owned by BMS. All significant intercompany transactions will be eliminated.

10. COLLABORATIVE ARRANGEMENTS AND CONTRACTS

Achillion Pharmaceuticals

In November 2004, we entered into an exclusive license and collaboration agreement with Achillion Pharmaceuticals, Inc. (Achillion). Under this agreement, we were granted worldwide rights for the research, development and commercialization of certain small molecule HCV replication inhibitors involving HCV protease, for the treatment of infection with the hepatitis C virus (HCV). Under this collaboration, Achillion is obligated to continue development of the compounds according to a mutually agreed upon development plan, through completion of a proof-of-concept clinical study in HCV-infected patients. The costs incurred to achieve proof-of-concept will be shared equally between Gilead and Achillion. Following the proof-of-concept study, Gilead is obligated to assume full responsibilities and incur all costs associated with development and commercialization of compounds warranting further development. Achillion has the option to participate in U.S. commercialization efforts for future products arising from this collaboration. In conjunction with the signing of the collaboration, Gilead paid a $5.0 million upfront license fee, which was recorded as research and development expense as there was no

10. COLLABORATIVE ARRANGEMENTS AND CONTRACTS (Continued)

future alternative use for the licensed technology. We also made a $5.0 million investment and purchased 2,300,437 million shares of Achillion's convertible preferred stock, which was recorded in other noncurrent assets. Additionally, we also agreed to make payments to Achillion upon achievement of certain milestones outlined in our agreement and pay royalties on future net sales of products arising from this collaboration.

Genelabs Technologies

In September 2004, we entered into a license and research collaboration agreement with Genelabs Technologies, Inc. (Genelabs) to research, develop and commercialize certain of Genelabs' novel nucleoside inhibitors of HCV polymerase for the treatment of chronic infection caused by HCV. In conjunction with the signing of this collaboration agreement, we paid an $8.0 million upfront license fee which was recorded in research and development expense as there is no future alternative use for this technology. For an initially agreed upon term of three years, Genelabs is obligated to lead research efforts. Gilead has the option to extend the research term of the collaboration for an additional year. Gilead will lead all development and commercialization activities. We agreed to provide annual funding of full time equivalents (FTE) which we expect to record as research and development expense. We are obligated to make additional payments upon the achievement of certain milestones, and pay royalties on future net sales of selected compounds that are developed and approved in relation to this collaboration.

Chiron Corporation

In August 2003, we entered into a non-exclusive licensing agreement with Chiron Corporation (Chiron) for the research, development and commercialization of small molecule therapeutics against selected HCV drug targets. Under the agreement, Gilead received non-exclusive rights to use Chiron's HCV technology to develop and commercialize products for the treatment of HCV. Under the terms of the agreement, we paid Chiron an up-front license fee of $2.0 million that was recorded as research and development expense as there is was no future alternative use for this the licensed technology. We also agreed to make additional payments to Chiron if certain clinical, regulatory or other contractually determined milestones are met. In 2004, we made $2.1 million in payments to Chiron that was recorded as research and development expense. Additionally, we are obligated to make royalty payments in the event a product is developed using the licensed technology.

Japan Tobacco Inc.

In July 2003, Gilead entered into a licensing agreement with Japan Tobacco Inc. (Japan Tobacco) under which Japan Tobacco will commercialize products in our HIV product portfolio in Japan. The agreement includes Viread , Emtriva and Truvada. Under the terms of the agreement, we received an up-front license fee of $4.0 million and are entitled to receive additional cash payments upon achievement of certain milestones. Japan Tobacco also will pay us a royalty on net sales, if any, of these products in Japan. The up-front fee has been recorded as deferred revenue and is being amortized into contract revenue over the period of our supply of products to Japan Tobacco, approximately 13 years as of December 31, 2004. In 2004, we received $2.5 million in milestone payments from Japan Tobacco related to Japanese regulatory approval and marketing authorization for Viread, which we are amortizing over the

10. COLLABORATIVE ARRANGEMENTS AND CONTRACTS (Continued)

same remaining period as the up-front license fee. In January 2005, Japan Tobacco submitted marketing authorization applications for Emtriva and Truvada to Japanese regulatory authorities.

Emory University

In April 1996, Triangle obtained, and in January 2003, we acquired as part of our acquisition of Triangle, an exclusive worldwide license to all of Emory University's (Emory) rights to purified forms of emtricitabine for use in the HIV and the hepatitis B fields. We are obligated to make certain milestone and royalty payments to Emory, including annual minimum royalties beginning the third year after the first FDA registration is granted for an anti-HIV product incorporating the emtricitabine technology in the United States and the third year after the first registration is granted for an anti-hepatitis B product incorporating the emtricitabine technology in certain major market countries. In 2002, Triangle began paying license maintenance fees because development milestones had not yet been achieved.

Due to the launch of Emtriva in 2003, we began paying royalties to Emory with respect to emtricitabine in the HIV indication. We paid royalties of $9.2 million and $0.7 million in 2004 and 2003, respectively, on net sales of Emtriva and net sales of Truvada, which also incorporates the emtricitabine technology and was launched in 2004. The license agreement with Emory terminates upon the later of patent expiration or the expiration of our obligation to pay royalties. In addition, we have the right to terminate the agreement in its entirety or with respect to one or both indications (HIV and HBV) in one or more countries prior to expiration at any time upon 90 days notice.

GlaxoSmithKline

In April 2002, Gilead and GSK entered into a licensing agreement providing GSK the rights to commercialize Hepsera , our oral antiviral for the treatment of chronic hepatitis B, in Asia, Latin America and certain other territories. Under the agreement, we retained rights to Hepsera in the United States, Canada, Eastern and Western Europe, Australia, New Zealand and Turkey. GSK received exclusive rights to develop Hepsera solely for the treatment of chronic hepatitis B in all of its territories, the most significant of which include China, Japan, Korea and Taiwan. In addition, GSK paid us an up-front licensing fee of $10.0 million and could pay us up to $30.0 million upon achievement by GSK of certain regulatory, development and commercial milestones. Of this $30.0 million, $2.0 million was received for the U.S. approval of Hepsera in 2002, $2.0 million was received for the Canadian approval of Hepsera in 2003, and an aggregate of $13.0 million was received for the commercial approvals of Hepsera in Japan, South Korea and Taiwan in 2004. GSK has full responsibility for development and commercialization of Hepsera in its territories. The up-front license fee and approval milestones have been recorded as deferred revenue with a total of $1.6 million, $0.9 million and $0.5 million being recognized as contract revenue in 2004, 2003 and 2002, respectively. The $23.9 million balance of deferred revenue at December 31, 2004 will be amortized into contract revenue over the period of our supply of Hepsera to GSK under the agreement, approximately 11 years.

In addition, GSK is required to pay Gilead royalties on net product sales that GSK generates from sales of Hepsera and Epivir—HBV/Zeffix (GSK's hepatitis product) in the GSK territories. Gilead began receiving royalties from GSK's sales of Hepsera in the first quarter of 2004 and recorded $2.1 million of royalty revenue in 2004. We recognize royalty revenue from GSK in the quarter following the quarter in which the related Hepsera sales occur.

10. COLLABORATIVE ARRANGEMENTS AND CONTRACTS (Continued)

OSI Pharmaceuticals

In December 2001, we completed the sale of our oncology assets to OSI Pharmaceuticals (OSI). Under the terms our agreement, we are entitled to additional payments from OSI of up to $30.0 million in either cash or a combination of cash and OSI stock if and when OSI reaches certain development milestones for NX 211, the most advanced of the oncology product candidates sold to OSI. Under a related manufacturing agreement, we produce NX 211 and GS 7904L, the two liposomal products included in the sale, at our manufacturing facility in San Dimas, California. In 2004, 2003 and 2002, we recognized $1.4 million, $1.1 million and $3.3 million, respectively, of contract revenue under this manufacturing agreement.

Archemix

In October 2001, we entered into an agreement with Archemix Corporation relating to our SELEX technology. Under this agreement, we gave Archemix exclusive rights to the SELEX process, including therapeutic and other commercial applications to the extent not already licensed under pre-existing agreements. Archemix paid us $9.0 million in 2001 and $8.5 million in 2002. As required by our license agreement with License Equity Holdings, Inc. (ULEHI), we paid 5% of these receipts to ULEHI, therefore recognizing $8.6 million and $8.1 million as contract revenue in 2001 and 2002, respectively. We also received a warrant to purchase 350,000 shares of Archemix common stock, the value of which is not material. As required by our license agreement with ULEHI, we transferred 5% of this warrant to them upon receipt. We have since transferred the remainder of the warrant to ULEHI. No additional payments are due by Archemix under this agreement.

Eyetech

In March 2000, we entered into an agreement with Eyetech Pharmaceuticals, Inc. relating to Macugen. Macugen is an inhibitor of vascular endothelial growth factor, or VEGF, which is known to play a role in the development of certain ophthalmic diseases. Under the terms of the agreement, Eyetech received worldwide rights to all therapeutic uses of Macugen and was responsible for all research and development costs. We received a $7.0 million up-front license fee from Eyetech in April 2000, which was recognized as revenue ratably over the one-year period over which we provided clinical supplies of product to Eyetech. We are also entitled to additional cash payments from Eyetech of up to $25.0 million if Eyetech reaches certain Macugen milestones as well as royalties on worldwide net sales of Macugen. In December 2003, we entered into an agreement with Eyetech to supply Macugen to Eyetech for three years. In 2004 and 2003, we recorded contract revenue of $10.0 million and $2.2 million, respectively, in connection with clinical supplies we provided to Eyetech and milestones achieved by Eyetech. We recognized as contact revenue $7.6 million in milestone payments from Eyetech in the second and third quarters of 2004 upon the filing of new drug applications in Europe and in the U.S for Macugen . In January 2005, Eyetech received FDA approval for the sale of Macugen in the United States. Our agreement with Eyetech expires upon the later of ten years after first commercial sale of any product developed, or the date the last patent expires under the agreement.

10. COLLABORATIVE ARRANGEMENTS AND CONTRACTS (Continued)

Additionally, we received a warrant to purchase 791,667 shares of Eyetech series B convertible preferred stock, exercisable at a price of $6.00 per share, the price at which the stock was issued to other investors. See Note 6 for a discussion of the warrant.

Fujisawa

Our rights to market AmBisome are subject to a 1991 agreement between Gilead and Fujisawa Healthcare, Inc., as successor to Fujisawa USA, Inc. (Fujisawa). Under the terms of the Fujisawa agreement, as amended, Fujisawa and Gilead co-promote AmBisome in the United States. Fujisawa has sole marketing rights to AmBisome in Canada and we have exclusive marketing rights to AmBisome in the rest of the world, provided we pay royalties to Fujisawa in connection with sales in significant Asian markets, including China, India, Japan, Korea and Taiwan. In connection with U.S. sales, Fujisawa purchases AmBisome from Gilead at our manufacturing cost. For sales in Canada, Fujisawa purchases AmBisome at manufacturing cost plus a specified percentage. Fujisawa collects all payments from the sale of AmBisome in the United States and Canada. We receive 20% of Fujisawa's gross profits from the sale of AmBisome in the United States. Gross profits include a deduction for cost of goods sold, giving us a current effective royalty rate of approximately 17% of Fujisawa's net sales of AmBisome in the United States. In connection with this agreement, we recorded royalty revenue of $13.0 million in 2004, $12.5 million in 2003 and $15.7 million in 2002.

Sumitomo

In September 1996, Gilead and Sumitomo entered into an agreement pursuant to which Sumitomo agreed to develop and market AmBisome in Japan. Under the terms of the agreement, Sumitomo paid us an initial $7.0 million licensing fee (less withholding taxes of $0.7 million) in October 1996 and a $3.0 million milestone payment (less withholding taxes of $0.3 million) in March 1998. Sumitomo is also required to make additional payments to us if certain clinical and commercial milestones are met and to pay us royalties on all Japanese AmBisome sales. Under the agreement, Gilead is obligated to provide a certain quantity of AmBisome to Sumitomo at no charge and is recognizing the payments received to revenue over the supply period. AmBisome is not yet approved for marketing in Japan.

Roche

In September 1996, Gilead entered into a collaboration agreement with Hoffmann-La Roche (Roche) to develop and commercialize therapies to treat and prevent viral influenza. Under the agreement, Roche received exclusive worldwide rights to Gilead's proprietary influenza neuraminidase inhibitors. In 2002, we recognized as contract revenue $8.0 million in milestone payments for the European approval of Tamiflu for treatment and prophylaxis. In 2004, we recognized as contract revenue $1.6 million in milestone payments for the Japanese approval of Tamiflu for prophylaxis, the last of all milestones receivable under our agreement.

In addition, Roche is required to pay Gilead royalties on its net product sales of Tamiflu, subject to reduction for certain defined manufacturing costs. We recorded a total of $44.6 million, $12.0 million and $3.4 million of Tamiflu royalties in 2004, 2003 and 2002, respectively. We recognize royalty revenue from Roche in the quarter following the quarter in which the related Tamiflu sales occur.

10. COLLABORATIVE ARRANGEMENTS AND CONTRACTS (Continued)

IOCB/REGA

In 1991 and 1992, Gilead entered into agreements with the Institute of Organic Chemistry and Biochemistry of the Academy of Sciences of the Czech Republic and Rega Stichting (IOCB/REGA) relating to certain nucleotide compounds discovered at these two institutions. Under the agreements, Gilead received the exclusive right to manufacture, use and sell these nucleotide compounds, and Gilead is obligated to pay IOCB/REGA a percentage of net revenues received from sales of products containing the compounds, subject to minimum royalty payments. The products covered by the agreement include Vistide, Hepsera and Viread, but exclude Tamiflu. In August 2004, the agreements with IOCB/REGA were amended to include Truvada and any future fixed-dose combination products that contain the licensed technology. Gilead currently makes quarterly payments to IOCB/REGA based on a percentage of Vistide, Hepsera, Viread and Truvada net sales. We paid royalties of $29.1 million, $19.3 million and $7.4 million to IOCB/REGA in 2004, 2003 and 2002, respectively.

In December 2000, the agreements with IOCB/REGA were amended to provide for a reduced royalty rate on future sales of Hepsera or Viread, in return for an up-front payment from Gilead of $11.0 million upon signing the agreement. This payment was recorded as a long-term prepaid royalty and is classified in other noncurrent assets on the balance sheet at December 31, 2004 and 2003. The prepaid royalty is being recognized as royalty expense over the expected commercial life of Viread and Hepsera. Amortization of the $11.0 million payment began as of the product launch dates of Viread and Hepsera.

11. LONG-TERM OBLIGATIONS

Long-term obligations consist of the following (in thousands):

	December 31, 2004	December 31, 2003
Capital lease obligations: monthly installments through 2007; interest rates ranging from 6% to 21%	$ 415	$ 462
Total long-term obligations	415	462
Less current portion	(181)	(139)
Long-term obligations due after one year	$ 234	$ 323

Future minimum lease payments under capital lease obligations are as follows (in thousands):

Year ending December 31,	
2005	$ 221
2006	196
2007	59
	476
Less amount representing interest	(61)
Total	$ 415

11. LONG-TERM OBLIGATIONS (Continued)

The terms of the various agreements require us to comply with certain financial and operating covenants. At December 31, 2004, we were in compliance with all such covenants.

12. CONVERTIBLE NOTES

On December 18, 2002, Gilead issued $345.0 million of the 2% convertible senior notes due December 15, 2007. The notes were convertible into a total of up to 14,680,850 shares of Gilead common stock at $23.50 per share. The convertible senior notes were provisionally redeemable in whole or in part, at the option of Gilead, at any time on or after June 20, 2004, at specified redemption prices plus accrued interest. Debt issuance costs of $8.4 million incurred in connection with the issuance of the notes were recorded as other noncurrent assets, and were being amortized to interest expense on a straight-line basis over the contractual term of the notes. Gilead called the convertible senior notes for redemption in October 2004 and issued 14,676,952 shares of Gilead common stock to note holders upon their conversion in November 2004. The redemption price was equal to the principal amount of the notes redeemed, plus accrued and unpaid interest to the redemption date. In connection with the redemption, Gilead paid a make-whole payment of $7.4 million to note holders, representing the equivalent of $60 per $1,000 principal value of the notes less interest actually paid or accrued and unpaid from the date of issuance of the notes to the redemption date. Upon conversion, the $5.1 million unamortized balance of related debt issuance costs was reclassified to additional paid-in capital.

On December 13, 2000, Gilead issued $250.0 million of the 5% convertible subordinated notes due December 15, 2007. The convertible subordinated notes were convertible into a total of up to 20,356,232 shares of Gilead common stock at $12.28 per share. The convertible subordinated notes were redeemable in whole or in part, at the option of Gilead, at any time on or after December 20, 2003, at specified redemption prices plus accrued interest. Debt issuance costs of $8.2 million incurred in connection with the issuance of the convertible subordinated notes were recorded as other noncurrent assets, and were being amortized to interest expense on a straight-line basis over the contractual term of the convertible subordinated notes. In November 2003, Gilead called the convertible subordinated notes for redemption and converted all the notes to 20,356,232 shares of common stock in December 2003. Upon conversion, the $4.6 million unamortized balance of related debt issuance costs was reclassified to additional paid-in capital.

13. COMMITMENTS AND CONTINGENCIES

Lease Arrangements

We have entered into various long-term noncancelable operating leases for equipment and facilities.

Facility leases in Foster City, California, San Dimas, California and Durham, North Carolina expire on various dates between 2009 and 2013. The Foster City lease has two five-year renewal options. In addition, Gilead has the option to purchase the Foster City properties at a specified amount. The Durham lease has two seven-year renewal options. We also have operating leases for sales, marketing and administrative facilities in Europe and Australia with various terms. Our equipment leases include a corporate airplane, which has an initial term of two years and an annual renewal option of up to ten years.

13. COMMITMENTS AND CONTINGENCIES (Continued)

Lease expense under our operating leases totaled approximately $14.9 million in 2004, $15.5 million in 2003 and $13.4 million in 2002.

Aggregate noncancelable future minimum rental payments under operating leases are as follows (in thousands):

Years ending December 31,	Operating Leases
2005	$ 14,160
2006	13,765
2007	13,244
2008	12,703
2009	7,912
Thereafter	26,846
	$ 88,630

Legal Proceedings

The complaints in each of the following cases allege that a large number of defendants, including Gilead, overcharged the governmental entity named as the plaintiff for pharmaceutical products furnished to participants in the Medicaid program. In general, the complaints assert claims under federal and state law, except for the Alabama state action, which includes only state law claims, and seek treble damage and attorneys' fees. The litigations are all at a preliminary stage and it is not possible to predict the outcome. Indeed, to date Gilead has not been served with process in any of these cases except *County of Westchester v. Abbott Laboratories, et al.* We intend to defend the cases vigorously. As the outcome of these cases cannot be predicted at this time, no amounts have been accrued.

(1) *County of Westchester v. Abbott Laboratories, et al.,* now pending as part of multi-district litigation in the United States District Court for the District of Massachusetts. This lawsuit was filed against Gilead and approximately 40 other defendants on August 14, 2003. It was amended to include approximately 80 defendants on January 26, 2005.

(2) *City of New York v. Abbott Laboratories et al.,* pending as part of multi-district litigation in the United States District Court for the District of Massachusetts. This lawsuit was filed against Gilead and approximately 43 other defendants on August 4, 2004. It was amended to approximately 73 defendants on January 26, 2005.

(3) *County of Rockland v. Abbott Laboratories, et al.,* pending as part of multi-district litigation in the United States District Court for the District of Massachusetts. This lawsuit did not originally name Gilead as a defendant, but was amended to include claims against Gilead as well as approximately 77 other defendants on January 26, 2005.

(4) *State of Alabama v. Abbott Laboratories et al.,* pending in the Circuit Court of Montgomery County, Alabama. This lawsuit was filed against Gilead and approximately 77 other defendants on January 26, 2005.

13. COMMITMENTS AND CONTINGENCIES (Continued)

A purported class action complaint was filed on November 10, 2003 in the United States District Court for the Northern District of California against Gilead and certain of our executive officers. The complaint alleges that the defendants violated the federal securities laws, specifically Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission, by making certain alleged false and misleading statements. The plaintiff seeks unspecified damages on behalf of a purported class of purchasers of Gilead's securities during the period from July 14, 2003 through October 28, 2003. Other similar actions were subsequently filed and the court issued an order consolidating the lawsuits into a single action on December 22, 2003. On February 9, 2004, the court issued an order appointing lead plaintiffs in the consolidated action. On April 30, 2004, lead plaintiffs, on behalf of the purported class, filed their consolidated amended complaint. On June 21, 2004, Gilead and individual defendants filed their motion to dismiss the consolidated amended complaint. On January 25, 2005, the Court granted defendants' motion to dismiss with leave to amend. No amounts have been accrued to date.

In December 2003, two purported shareholder derivative lawsuits were filed by individual shareholders on behalf of Gilead against its directors and certain executive officers in the Superior Court of the State of California, County of San Mateo alleging, among other things, that defendants violated the California Corporations Code and breached fiduciary duties owing to Gilead. Gilead is named as a nominal defendant. The plaintiffs seek unspecified damages on behalf of Gilead in connection with alleged insider trading during the period between July 14, 2003 and October 28, 2003 and defendants' alleged breach of their fiduciary duties, abuse of control, waste and mismanagement. The two cases were consolidated into a single action on January 15, 2004. A third, similar case was filed on February 4, 2004 and later consolidated with the prior two cases. Plaintiffs have filed a consolidated complaint, which was amended two times, most recently on November 22, 2004. Gilead demurred to each consolidated complaint, and the court granted each demurrer. On December 14, 2004, plaintiffs filed a motion for leave to file a third consolidated amended complaint and on January 7, 2005, the Court granted the plaintiff's motion, rendering that complaint the operative complaint. We intend to demur to this complaint. A trial is scheduled for June 13, 2005. As the outcome of these cases cannot be predicted at this time, no amounts have been accrued.

We are also a party to various other legal actions that arose in the ordinary course of our business. We do not believe that any of these other legal actions will have a material adverse impact on our business, results of operations or financial position.

Other Commitments and Contingencies

In the normal course of business, we may be subject to contingencies that may arise from matters such as product liability claims, legal proceedings, shareholder suits and tax matters. We accrue for such contingencies in accordance with SFAS No. 5, *Accounting for Contingencies* .

In the normal course of business, we have entered into various firm minimum purchase commitments for inventory-related materials from certain active pharmaceutical ingredient suppliers. As of December 31, 2004, we had approximately $232.2 million in purchase commitments as follows: $104.7 million in 2005, $42.5 million in 2006, $42.5 million in 2007 and $42.5 million in 2008.

14. STOCKHOLDERS' EQUITY

Preferred Stock

Gilead has 5,000,000 shares of authorized preferred stock issuable in series. Our Board of Directors (Board) is authorized to determine the designation, powers, preferences and rights of any such series. We have reserved 400,000 shares of preferred stock for potential issuance under the Preferred Share Purchase Rights Plan. There was no preferred stock outstanding as of December 31, 2004 and 2003.

Employee Stock Purchase Plan

Under Gilead's Employee Stock Purchase Plan (ESPP), employees can purchase shares of Gilead common stock based on a percentage of their compensation. The purchase price per share must equal at least the lower of 85% of the market value on the date offered or the date purchased. A total of 12.6 million shares of common stock have been reserved for issuance under the ESPP. As of December 31, 2004, 10.4 million shares of the total shares reserved had been issued under the ESPP (9.8 million shares as of December 31, 2003).

Stock Option Plans

In May 2004, Gilead's stockholders approved and Gilead adopted the 2004 Equity Incentive Plan (2004 Plan) as replacement for both the 1991 Stock Option Plan (1991 Plan) and the 1995 Non-Employee Directors' Stock Option Plan (1995 Directors' Plan). The adoption of the 2004 Plan included an increase of 18,994,142 in the number of shares available for issuance over the remaining shares available for issuance under the 1991 Plan and 1995 Directors' Plan. The 2004 Plan provides for the issuance of various types of equity awards, such as, incentive stock options, nonstatutory stock options, stock appreciation rights (SAR), dividend equivalent rights, restricted stock, performance units, performance shares and phantom shares. Under the 2004 Plan, the exercise or purchase price of incentive stock options shall not be less than 110% of the fair value of Gilead's common stock on the date of grant. In the case of nonstatutory stock options and SARs, the per share exercise price shall not be less than 100% of the fair value of Gilead's common stock on the date of grant. In the case of other types of awards, the exercise or purchase price is determined by the plan administrator. Incentive stock options typically vest over five years pursuant to a formula determined by the Board and expire after ten years. The term of other awards shall be the term stated in the award agreement, but no more than ten years from the date of grant. Eligible participants include employees, directors and consultants of Gilead, except that only employees are eligible for incentive stock options. The Compensation Committee or its delegate determines the awards to be granted as well as vesting terms. At December 31, 2004, there were 16,764,722 shares remaining and available for future grant under the 2004 Plan.

In November 1991, Gilead adopted the 1991 Plan for issuance of common stock to employees and consultants. Options issued under the 1991 Plan can, at the discretion of the Board, be either incentive stock options or nonqualified stock options. In May 1998, the 1991 Plan was amended such that the exercise price of all stock options must be at least equal to the fair value of Gilead's common stock on the date of grant. The options vest over five years pursuant to a formula determined by the Board and expire after ten years. The 1991 Plan was amended and restated in April 2000 to extend the term of the plan through 2010. In May 2002 the stockholders approved an amendment to the 1991 Plan that increased the

14. STOCKHOLDERS' EQUITY (Continued)

total number of authorized shares under the plan from 94,000,000 to 106,000,000. In May 2004, the remaining shares available for future grant under the 1991 Plan were transferred to the 2004 Plan. Additionally, if options granted under the 1991 Plan expire or otherwise terminate without being exercised, the shares of our common stock reserved for such options again become available for future grant under the 2004 Plan.

In November 1995, Gilead adopted the 1995 Directors Plan for issuance of common stock to non-employee Directors pursuant to a predetermined formula. The exercise price of options granted under the Directors' Plan must be at least equal to the fair value of Gilead's common stock on the date of grant. For options granted before January 2003, vesting is over five years from the date of grant in quarterly five percent installments. Initial options granted after January 2003 to new Directors vest over three years from the date of grant in equal annual installments. Annual grants thereafter to existing Directors vest after one year. All options expire after ten years. In May 2002, the stockholders approved an amendment to the Directors' Plan that increased the total number of authorized shares under the Plan from 4,400,000 to 5,600,000. In May 2004, the remaining shares available for grant under the 1995 Plan were transferred to the 2004 Plan. Additionally, if options granted under the 1995 Plan expire or otherwise terminate without being exercised, the shares of our common stock reserved for such options again become available for future grant under the 2004 Plan.

Stock plans assumed by Gilead in the merger with NeXstar include the 1988 Stock Option Plan, the 1993 Incentive Stock Plan, and the 1995 Director Option Plan (collectively, NeXstar Plans). Options pursuant to the NeXstar Plans that were issued and outstanding as of July 29, 1999 have been converted into options to purchase Gilead common stock as a result of the merger and remain subject to their original terms and conditions. No shares are available for grant of future options under any of the NeXstar Plans.

Stock plans assumed by Gilead in the acquisition of the net assets of Triangle include the 1996 Stock Option Plan and a separate plan for the former chief executive officer of Triangle (collectively, Triangle Plans). Options pursuant to each plan that were issued and outstanding as of January 23, 2003 have been converted into options to purchase approximately 2.0 million shares of Gilead common stock as a result of the acquisition and remain subject to their original terms and conditions. No shares are available for grant of future options under either of the Triangle Plans.

14. STOCKHOLDERS' EQUITY (Continued)

The following table summarizes activity under all Gilead, NeXstar and Triangle stock option plans. All option grants presented in the table had exercise prices not less than the fair value of the underlying stock on the grant date (shares in thousands):

	Year ended December 31,					
	2004		2003		2002	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Outstanding, beginning of year	45,520	$ 13.50	42,120	$ 9.34	43,372	$ 7.13
Granted and assumed	12,748	$ 30.20	15,742	$ 20.87	8,742	$ 16.69
Forfeited	(1,817)	$ 20.74	(1,942)	$ 16.29	(1,570)	$ 10.95
Exercised	(7,038)	$ 9.61	(10,400)	$ 7.27	(8,424)	$ 5.31
Outstanding, end of year	49,413	$ 18.10	45,520	$ 13.50	42,120	$ 9.34
Exercisable, end of year	22,554	$ 11.41	19,996	$ 9.05	18,550	$ 5.91
Weighted average fair value of options granted		$ 13.71		$ 13.68		$ 11.01

The following is a summary of Gilead options outstanding and options exercisable at December 31, 2004 (options in thousands):

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Options Outstanding	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price	Options Exercisable	Weighted Average Exercise Price
$ 1.63-$7.41	12,400	4.23	$ 5.81	11,136	$ 5.63
$ 7.51-$16.91	13,368	6.92	$ 14.45	7,188	$ 13.68
$ 16.94-$28.86	14,343	8.40	$ 22.96	3,175	$ 18.59
$ 29.12-$70.47	9,302	9.00	$ 32.24	1,055	$ 35.36
Total	49,413	7.07	$ 18.10	22,554	$ 11.41

Preferred Share Purchase Rights Plan

In November 1994, we adopted a Preferred Share Purchase Rights Plan (Rights Plan). The Rights Plan provides for the distribution of a preferred stock purchase right as a dividend for each share of Gilead common stock. The purchase rights are not currently exercisable. Under certain conditions involving an acquisition or proposed acquisition by any person or group of 15% or more of our common stock, the purchase rights permit the holders (other than the 15% holder) to purchase Gilead common stock at a 50% discount from the market price at that time, upon payment of a specified exercise price per purchase right. In addition, in the event of certain business combinations, the purchase rights permit the purchase of the common stock of an acquirer at a 50% discount from the market price at that time. Under certain conditions, the purchase rights may be redeemed by the Board in whole, but not in part, at a price of

14. STOCKHOLDERS' EQUITY (Continued)

$0.0025 per purchase right. The purchase rights have no voting privileges and are attached to and automatically trade with Gilead common stock.

In October 1999 and again in October 2003, the Board of Directors approved amendments to the Rights Plan. The first amendment provided, among other things, for an increase in the exercise price of a right under the plan from $15 to $100 and an extension of the term of the plan from November 21, 2004 to October 20, 2009. The second amendment provides, among other things, for an increase in the exercise price of a right under the plan from $100 to $400 and an extension of the term of the Rights Plan to October 27, 2013.

15. COMPREHENSIVE INCOME (LOSS)

Comprehensive income (loss) is comprised of net income and certain changes in stockholders' equity that are excluded from net income. Such excluded items, other comprehensive income (loss), includes changes in the fair value of our untriggered effective cash flow hedges, changes in unrealized gains and losses on our available-for-sale securities and changes in our cumulative foreign currency translation account. Comprehensive income (loss) for the years ended December 31, 2004, 2003 and 2002 is included in our consolidated statement of stockholders' equity. The components of comprehensive income (loss) are shown net of related taxes where the underlying assets or liabilities are held in jurisdictions that are expected to generate a future tax benefit or liability.

The following reclassifications were recorded in connection with net realized gains (losses) on sales of securities and cash flow hedges that were previously included in comprehensive income (loss) (in thousands):

	Year ended December 31,		
	2004	2003	2002
Net unrealized loss arising during the year on available-for-sale securities, net of tax benefit of $1,193, $2,268 and $8,079 for 2004, 2003 and 2002, respectively	$ (1,866)	$ (3,548)	$ (12,637)
Net unrealized gain (loss) arising during the year on cash flow hedges	(26,549)	(765)	221
Reclassification adjustments, net of tax benefit (provision) of $183, $(303) and $5,153 for 2004, 2003 and 2002, respectively	1,051	(695)	8,023
Other comprehensive (loss)	$ (27,364)	$ (5,008)	$ (4,393)

The balance of accumulated other comprehensive income (loss), net of taxes, as reported on the balance sheet consists of the following components (in thousands):

	December 31,	
	2004	2003
Net unrealized loss on available-for-sale securities	$ (1,932)	$ (352)
Net unrealized loss on cash flow hedges	(26,549)	(765)
Net foreign currency translation gain	9,789	5,624
Accumulated other comprehensive income (loss)	$ (18,692)	$ 4,507

16. DISCLOSURES ABOUT SEGMENTS OF AN ENTERPRISE AND RELATED INFORMATION

Gilead operates in one business segment, which primarily focuses on the development and commercialization of human therapeutics for infectious diseases. All products are included in one segment, because our major products, Viread (tenofovir disoproxil fumarate), Emtriva (emtricitabine) and Truvada (emtricitabine and tenofovir disoproxil fumarate) (collectively, our HIV products) and Ambisome (amphotericin B liposome for injection), which accounted for 90%, 93% and 97% of product sales for the years ended December 31, 2004, 2003 and 2002, respectively, have similar economic and other characteristics, including the nature of the products and production processes, type of customers, distribution methods, and regulatory environment.

Product sales consist of the following (in thousands):

	Year ended December 31,		
	2004	2003	2002
HIV Products:			
Viread	$ 782,915	$ 566,478	$ 225,815
Emtriva	57,600	10,021	—
Truvada	67,865	—	—
Total HIV products	908,380	576,499	225,815
AmBisome	211,688	198,350	185,669
Hepsera	112,525	50,506	6,716
Vistide	7,904	7,576	2,631
DaunoXome	1,727	3,410	3,048
Total product revenues	$ 1,242,224	$ 836,341	$ 423,879

The following table summarizes revenues from external customers and collaborative partners by geographic region. Revenues are attributed to countries based on the location of the customer or collaborative partner (in thousands):

	Year ended December 31,		
	2004	2003	2002
United States	$ 683,286	$ 443,506	$ 218,958
France	120,859	89,176	42,417
Spain	103,329	78,391	33,591
United Kingdom	88,980	63,066	43,427
Italy	72,038	42,722	20,818
Germany	60,363	42,996	29,461
Switzerland	54,718	16,492	12,445
Other European countries	93,048	64,273	47,527
Other countries	48,000	27,242	18,146
Total revenues	$ 1,324,621	$ 867,864	$ 466,790

16. DISCLOSURES ABOUT SEGMENTS OF AN ENTERPRISE AND RELATED INFORMATION (Continued)

At December 31, 2004, the net book value of our property, plant and equipment was $223.1 million. Approximately 94% of such assets are located in the United States. At December 31, 2003, the net book value of property, plant and equipment was $198.2 million, and approximately 95% of such assets were located in the United States.

The following table summarizes revenues from our three largest customers who distribute our drugs primarily in the United States (as a % of total revenues):

	Year ended December 31,		
	2004	2003	2002
Cardinal Health, Inc.	17.3%	17.3%	10.3%
AmerisourceBergen Corp.	10.9%	13.7%	11.9%
McKesson Corp	10.2%	11.6%	11.0%

17. INCOME TAXES

The provision for (benefit from) income taxes consisted of the following (in thousands):

		Year ended December 31,		
		2004	2003	2002
Federal	Current	$ 20,790	$ 5,175	$ (1,300)
	Deferred	141,218	(89,363)	—
		162,008	(84,188)	(1,300)
State	Current	16,883	1,016	4
	Deferred	20,654	(20,824)	—
		37,537	(19,808)	4
Foreign	Current	7,383	9,849	2,596
	Deferred	123	(1,383)	—
		7,506	8,466	2,596
		$ 207,051	$ (95,530)	$ 1,300

Foreign pre-tax income (loss) was $83.9 million in 2004, $(79.7) million in 2003 and $(24.1) million in 2002. Gilead's foreign subsidiaries generated operating losses in 2003 and 2002 reflecting the costs of building a commercial infrastructure in Europe and the foreign subsidiaries' investment in our research and development efforts. Unremitted foreign earnings that are considered to be permanently invested outside the United States and on which no U.S. taxes have been provided, are approximately $30.5 million as of December 31, 2004. The residual U.S. tax liability, if such amounts were remitted, would be approximately $12.0 million.

17. INCOME TAXES (Continued)

The difference between the provision for (benefit from) taxes on income and the amount computed by applying the federal statutory income tax rate to income (loss) before provision for (benefit from) income taxes, is explained below (in thousands):

	Year ended December 31,		
	2004	2003	2002
Income (loss) before provision for (benefit from) income taxes	$ 656,422	$ (167,533)	$ 73,397
Tax at federal statutory rate	$ 229,748	$ (58,636)	$ 25,689
State taxes, net of federal benefit	24,399	660	4
Benefitted losses	(14,192)	(150,842)	(23,601)
Change in valuation allowance	(14,192)	(111,570)	—
Foreign earnings at different rates	(8,607)	3,081	508
Research and experimentation credits	(4,986)	—	—
In-process research and development charge	—	170,913	—
Foreign losses at different rates	—	45,689	—
Other	(5,119)	5,175	(1,300)
Provision for (benefit from) income taxes	$ 207,051	$ (95,530)	$ 1,300

The tax benefits associated with stock option exercises and the employee stock purchase plan resulted in a tax benefit of $22.0 million during the year ended December 31, 2004. Such benefit was credited to additional paid-in capital when realized.

17. INCOME TAXES (Continued)

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of our deferred tax assets and liabilities as of December 31, 2004 and 2003 are as follows (in thousands):

	December 31,	
	2004	2003
Deferred tax assets:		
Net operating loss carryforwards	$ 50,023	$ 156,789
Research and other tax credit carryforwards	43,541	63,329
Reserves and accruals not currently deductible	23,052	26,458
Depreciation related	15,143	5,091
Capitalized research and development expenses	4,439	6,961
Other, net	8,718	50,607
	144,916	309,235
Valuation allowance	(33,349)	(59,174)
Total deferred tax assets	111,567	250,061
Deferred tax liabilities:		
Unremitted foreign earnings	(13,074)	—
Total deferred tax liabilities	(13,074)	—
Net deferred tax assets	$ 98,493	$ 250,061

The valuation allowance decreased by $25.8 million and $167.6 million for the years ended December 31, 2004 and 2003, respectively.

We have a valuation allowance of $33.3 million and $59.2 million at December 31, 2004 and 2003, respectively. We have concluded, based on the standard set forth in SFAS No. 109, *Accounting for Income Taxes* , that it is more likely than not that we will not realize any benefits from the related deferred tax assets. We will assess the need for the valuation allowance at each quarter end based on all available evidence. Approximately $11.0 million of the valuation allowance at December 31, 2004 relates to tax benefits of stock option deductions, which will be credited to additional paid-in capital when realized.

At December 31, 2004, we had U.S. federal net operating loss carryforwards of approximately $142.9 million. The federal net operating loss carryforwards will expire at various dates through 2023, if not utilized. In addition, we had federal and state tax credit carryforwards of approximately $41.4 million and $3.4 million, respectively, which expire at various dates through 2023, if not utilized.

Utilization of net operating losses and tax credit carryforwards may be subject to an annual limitation due to ownership change limitations provided in the Internal Revenue Code and similar state provisions. This annual limitation may result in the expiration of the net operating losses and credits before utilization.

On October 22, 2004, the American Jobs Creation Act (the AJCA) was signed into law. The AJCA includes a deduction of 85% of certain foreign earnings that are repatriated, as defined in the AJCA. We may elect to apply this provision to qualifying earnings repatriations in fiscal 2005. We have started an

17. INCOME TAXES (Continued)

evaluation of the effects of the repatriation provision; however, we do not expect to be able to complete this evaluation until after Congress or the Treasury Department provide additional clarifying language on key elements of the AJCA. We expect to complete our evaluation of the potential effects of the repatriation provision within a reasonable period of time following the publication of the additional clarifying language. The range of possible amounts that we are considering for repatriation under the AJCA is between zero and $500 million (maximum allowable to the Company as defined in the AJCA). The related potential range of income tax cannot be reasonably estimated at December 31, 2004.

18. DEFERRED COMPENSATION PLANS

Gilead maintains one retirement savings plan under which eligible employees may defer compensation for income tax purposes under Section 401(k) of the Internal Revenue Code (Gilead Plan). Under the Gilead Plan, employees may contribute up to 15% of their eligible annual compensation. Gilead makes matching contributions under the Gilead Plan. We contribute up to 50% of an employee's first 6% of contributions up to an annual maximum match of $2,500 . Our total matching contribution expense under the Gilead Plan was $1.8 million in 2004, $1.4 million in 2003 and $1.2 million in 2002.

Gilead maintains a deferred compensation plan under which our directors and officers may defer compensation for income tax purposes under the Internal Revenue Code. Under the plan, officers may contribute up to 70% of their annual salaries and up to 100% of their annual management bonus while directors may contribute up to 100% of their annual retainer fee. Amounts deferred by participants are deposited with a rabbi trust and are recorded in other noncurrent assets in the consolidated balance sheet. Beginning in 2004, directors may also elect to receive all or a portion of their annual cash retainer in phantom shares. As of December 31, 2004, we have issued 3,030 phantom shares. Participants can elect one of several distribution dates available under the plan at which they will receive their deferred compensation payment.

19. QUARTERLY RESULTS OF OPERATIONS (UNAUDITED)

The following table is in thousands, except per share amounts:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
2004 (1)(2)(6)				
Total revenues	$ 309,127	$ 319,722	$ 326,187	$ 369,585
Gross profit on product sales	241,636	257,240	269,885	306,876
Total costs and expenses	164,704	161,524	162,417	204,287
Net income	114,428	111,459	113,240	110,244
Net income per share—basic	$ 0.27	$ 0.26	$ 0.26	$ 0.25
Net income per share—diluted	$ 0.25	$ 0.24	$ 0.25	$ 0.24

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
2003 (3)(4)(5)(6)				
Total revenues	$ 165,105	$ 238,870	$ 200,372	$ 263,517
Gross profit on product sales	134,592	198,562	168,139	222,357
Total costs and expenses	598,702	131,098	121,199	175,540
Net income (loss)	(438,054)	100,372	73,096	192,583
Net income (loss) per share—basic	$ (1.11)	$ 0.25	$ 0.18	$ 0.47
Net income (loss) per share—diluted	$ (1.11)	$ 0.23	$ 0.17	$ 0.43

(1) In the first quarter of 2004, Gilead recorded a pre-tax gain of $20.6 million related to our warrants in Eyetech which completed its initial public offering.

(2) In the fourth quarter of 2004, Gilead recorded an expense of $7.4 million in connection with a make-whole payment to our convertible senior debt holders in relation to the redemption and conversion of our convertible senior debt.

(3) In the first quarter of 2003, Gilead completed the acquisition of the net assets of Triangle and recorded a charge of $488.6 million for purchased in-process research and development.

(4) In the third quarter of 2003, Gilead was reimbursed $13.2 million of research and development expenses resulting from the settlement of a contractual dispute with a vendor.

(5) In the fourth quarter of 2003, Gilead recorded non-cash impairment charges against certain long-lived assets of $10.2 million. In addition, we recorded an income tax benefit of $111.6 million related to the reduction of the valuation allowance on certain of our net deferred tax assets.

(6) On September 3, 2004, Gilead implemented a two-for-one stock split in the form of stock dividends. All share and per share amounts for all periods presented have been restated to reflect the stock split.

GILEAD SCIENCES, INC.

Schedule II: Valuation and Qualifying Accounts

	Balance at Beginning of Period	Additions Charged to Expense	Additions Charged to Other	Deductions	Balance at End of Period
Year ended December 31, 2004:					
Accounts receivable allowances(1)	$ 25,607	$ 65,442	$ 340	$ 63,898	$ 27,491
Inventory reserve	3,138	1,606	—	1,689	3,055
Valuation allowance for deferred tax assets	59,174	—	—	25,825	33,349
Year ended December 31, 2003:					
Accounts receivable allowances(1)	$ 11,003	$ 47,319	$ 436	$ 33,151	$ 25,607
Inventory reserve	1,615	2,899	—	1,376	3,138
Valuation allowance for deferred tax assets	226,821	—	—	167,647	59,174
Year ended December 31, 2002:					
Accounts receivable allowances(1)	$ 4,293	$ 21,546	$ —	$ 14,836	$ 11,003
Inventory reserve	1,156	855	—	396	1,615
Valuation allowance for deferred tax assets	212,700	—	14,121	—	226,821

(1) Allowances are for doubtful accounts, sales returns, cash discounts and chargebacks.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

GILEAD SCIENCES , INC.

BY: /s/ JOHN C. MARTIN
John C. Martin
President and Chief Executive Officer

POWER OF ATTORNEY KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John C. Martin and Mark L. Perry, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments to this Report, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming that all said attorneys-in-fact and agents, or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JOHN C. MARTIN John C. Martin	President and Chief Executive Officer, Director (Principal Executive Officer)	March 14, 2005
/s/ JOHN F. MILLIGAN John F. Milligan	Executive Vice President, Chief Financial Officer (Principal Financial and Accounting Officer)	March 14, 2005
/s/ JAMES M. DENNY James M. Denny	Chairman of the Board of Directors	March 14, 2005
/s/ PAUL BERG Paul Berg	Director	March 14, 2005
/s/ ETIENNE F. DAVIGNON Etienne F. Davignon	Director	March 14, 2005

/s/ GORDON E. MOORE Gordon E. Moore	Director	March 14, 2005
/s/ NICHOLAS G. MOORE Nicholas G. Moore	Director	March 14, 2005
/s/ GEORGE P. SHULTZ George P. Shultz	Director	March 14, 2005
/s/ GAYLE E. WILSON Gayle E. Wilson	Director	March 14, 2005

Southern California Chapter of the
Society of Industrial and Office Realtors, ® Inc.

INDUSTRIAL REAL ESTATE LEASE
(SINGLE-TENANT FACILITY)

ARTICLE ONE: **BASIC TERMS**

This Article One contains the Basic Terms of this Lease between the Landlord and Tenant named below. Other Articles, Sections and Paragraphs of the Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01. **Date of Lease:** February 24, 2003

Section 1.02. **Landlord (include legal entity):** MAJESTIC-MAPA PROPERITES, LLC, a California limited liability company
Address of Landlord: 13191 Crossroads Parkway North, 6 th Floor
City of Industry, CA 91746

Section 1.03. **Tenant (include legal entity):** GILEAD SCIENCES, INC., a Delaware corporation
Address of Tenant: 333 Lakeside Drive
Foster City, CA 94404

Section 1.04. **Property:** (include street address, approximate square footage and description) that approximately 51,000 square foot building more commonly known as 502 Covina Boulevard, San Dimas, California as outlined in red on Exhibit "A", subject to the non-exclusive use of such area outlined in green.

Section 1.05. **Lease Term:** 10 years — months beginning on December 1, 2003 or such other date as is specified in this Lease, and ending on November 30, 2013

Section 1.06. **Permitted Uses:** (See Article Five) Only for general office, laboratory, warehousing and manufacturing of pharmaceutical products

Section 1.07. **Tenant's Guarantor:** (If none, so state) None

Section 1.08. **Brokers:** (See Article Fourteen) (If none, so state)
Landlord's Broker: Majestic Realty Co.
Tenant's Broker: None

Section 1.09. **Commission Payable to Landlord's Broker:** (See Article Fourteen) $ per separate agreement

Section 1.10. **Initial Security Deposit:** (See Section 3.03) $ 58,650.00

Section 1.11. **Vehicle Parking Spaces Allocated to Tenant:** per Exhibit "A"

Section 1.12. **Rent and Other** Charges **Payable by Tenant:**

(a) **BASE RENT:** FIFTY-EIGHT THOUSAND SIX HUNDRED FIFTY AND NO/100------ Dollars ($ 58,650.00.) per month for the first sixty (60) months, as provided in Section 3.01, and shall be increased on the first day of the sixty-first (61 st) month(s) after the Commencement Date, SIXTY-FOUR THOUSAND FIVE HUNDRED FIFTEEN AND NO/100 DOLLARS ($64,515.00).

(b) **OTHER PERIODIC PAYMENTS:** (i) Real Property Taxes (See Section 4.02); (ii) Utilities (See Section 4.03); (iii) Insurance Premiums (See Section 4.04); (iv) Impounds for Insurance Premiums and Property Taxes (See Section 4.07; (v) Maintenance, Repairs and Alterations (See Article Six).

Section 1.13. **Landlord's Share of Profit on Assignment or Sublease:** (See Section 9.05 fifty percent (50%) of the Profit (the "Landlord's Share").

Section 1.14. **Riders:** The following Riders are attached to and made a part of this Lease: (If none, so state).
Addendum pages 1 through 13, and Exhibits “A”, “B”, “C” and “D”.

ARTICLE TWO: **LEASE TERM**

Section 2.01. **Lease of Property For Lease Term.** Landlord leases the Property to Tenant and Tenant leases the Property from Landlord for the Lease Term. The Lease Term is for the period stated in Section 1.05 above and shall begin and end on the dates specified in Section 1.05 above, unless the beginning or end of the Lease Term is changed under any provision of this Lease. The “Commencement Date” shall be the date specified in Section 1.05 above for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease.

Section 2.02. Intentionally Deleted.

Section 2.03. Intentionally Deleted.

Section 2.04. **Holding Over.** Tenant shall vacate the Property upon the expiration or earlier termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant’s delay in vacating the Property. If Tenant does not vacate the Property upon the expiration or earlier termination of the Lease and Landlord thereafter accepts rent from Tenant, Tenant’s occupancy of the Property shall be a “month-to-month” tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the Base Rent then in effect shall be increased by twenty-five percent (25%).

Section 2.05. **See Addendum.**

ARTICLE THREE: **BASE RENT**

Section 3. 01. **Time and Manner of Payment.** Upon execution of this Lease, Tenant shall pay Landlord the Base Rent in the amount stated in Paragraph 1.12(a) above for the first month of the Lease Term. On the first day of the second month of the Lease Term and each month thereafter, Tenant shall pay Landlord the Base Rent, in advance, without offset, deduction or prior demand. The Base Rent shall be payable at Landlord’s address or at such other place as Landlord may designate in writing.

Section 3.02. Intentionally Deleted.

Section 3.03. **Security Deposit; Increases.**

(a) Upon the execution of this Lease, Tenant shall deposit with Landlord a cash Security Deposit in the amount set forth in Section 1.10 Above. Landlord may apply all or part of the Security Deposit to any unpaid rent or other charges due from Tenant or to cure any other defaults of Tenant. If Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (1) days after Landlord’s written request. Tenant’s failure to do so shall be a material default under this Lease. No interest shall be paid on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit.

(b) Each time the Base Rent is increased, Tenant shall deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the adjusted Base Rent as the initial Security Deposit bore to the initial Base Rent.

Section 3.04. **Termination; Advance Payments.** Upon termination of this Lease under Article Seven (Damage or Destruction), Article Eight (Condemnation) or any other termination not resulting from Tenant’s default, and after Tenant has vacated the Property in the manner required by this Lease, Landlord shall (within sixty (60) days from Tenant delivering exclusive possession of the Property to Landlord) refund to Tenant (or Tenant’s successor) the unused portion of the Security Deposit, any advance rent or other advance payments made by Tenant to Landlord, and any amounts paid for real property taxes and other reserves which apply to any time periods after termination of the Lease.

ARTICLE FOUR: **OTHER CHARGES PAYABLE BY TENANT**

Section 4.01. **Additional Rent.** All charges payable by Tenant other than Base Rent are called “Additional Rent.” Unless this Lease provides otherwise, Tenant shall pay all Additional Rent then due with the next monthly installment of Base Rent. The term “rent” shall mean Base Rent and Additional Rent.

Section 4.02. **Property Taxes.**

(a) **Real Property Taxes.** Tenant shall pay all real property taxes on the Property (including any fees, taxes or assessments against, or as a result of, any tenant improvements installed on the Property by or for the benefit of Tenant) during the Lease Term. Subject to Paragraph 4.02(c) and Section 4.07 below, such payment shall be made at least ten (10) days prior to the delinquency date of the taxes. Within such ten (10) -day period, Tenant shall furnish Landlord with satisfactory evidence that the real property taxes have been paid. Landlord shall reimburse Tenant for any real property taxes paid by Tenant covering any period of time prior to or after the Lease Term. If Tenant fails to pay the real property taxes when due, Landlord may pay the taxes and Tenant shall reimburse Landlord for the amount of such tax payment as Additional Rent.

(b) **Definition of "Real Property Tax."** "Real property tax" means: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty (to the extent caused by Tenant's acts or omissions), or tax imposed by any taxing authority against the Property; (ii) any tax on the Landlord's right to receive, or the receipt of, rent or income from the Property or against Landlord's business of leasing the Property; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Property by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Property due to a change of ownership, as defined by applicable law, or other transfer of all or part of Landlord's interest in the Property; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Real property tax" does not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

(c) **Joint Assessment.** If the Property is not separately assessed, Landlord shall reasonably determine Tenant's share of the real property tax payable by Tenant under Paragraph 4.02(a) from the assessor's worksheets or other reasonably available information. Tenant shall pay such share to Landlord within fifteen (15) days after receipt of Landlord's written statement.

(d) **Personal Property Taxes.**

(i) Tenant shall pay all taxes charge against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall try to have personal property taxed separately from the Property.

(ii) If any of Tenant's personal property is taxed with the Property, Tenant shall pay Landlord the taxes for the personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes.

(e) **Tenant's Right to Contest Taxes.** Tenant may attempt to have the assessed valuation of the Property reduced or may initiate proceedings to contest the real property taxes. If required by law, Landlord shall join in the proceedings brought by Tenant. However, Tenant shall pay all costs of the proceedings, including any costs or fees incurred by Landlord. Upon the final determination of any proceeding or contest, Tenant shall immediately pay the real property taxes due, together with all costs, charges, interest and penalties incidental to the proceedings. If Tenant does not pay the real property taxes when due and contests such taxes, Tenant shall not be in default under this Lease for nonpayment of such taxes if Tenant deposits funds with Landlord or opens an interest-bearing account reasonably acceptable to Landlord in the joint names of Landlord and Tenant. The amount of such deposit shall be sufficient to pay the real property taxes plus a reasonable estimate of the interest, costs, charges and penalties which may accrue if Tenant's action is unsuccessful, less any applicable tax impounds previously paid by Tenant to Landlord. The deposit shall be applied to the real property taxes due, as determined at such proceedings. The real property taxes shall be paid under protest from such deposit if such payment under protest is necessary to prevent the Property from being sold under a "tax sale" or similar enforcement proceeding.

Section 4.03. **Utilities.** Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Property. However, if any services or utilities are jointly metered with other property, Landlord shall make a reasonable determination of Tenant's proportionate share of the cost of such utilities and services and Tenant shall pay such share to Landlord within fifteen (15) days after receipt of Landlord's written statement.

Section 4.04. **Insurance Policies.**

(a) **Liability Insurance.** During the Lease Term, Tenant shall maintain a policy of commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Property. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be Three Million Dollars ($3,000,000.00) per occurrence and shall be subject to periodic increase based upon industry standards for similar facilities. The liability insurance obtained by Tenant under this Paragraph 4.04(a) shall (i) be primary and non-contributing; (ii) contain cross-liability endorsements; and (iii) insure Landlord against Tenant's performance under Section 5.05, if the matters giving rise to the indemnity under Section 5.05 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease. Landlord may also obtain comprehensive public liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Property. The policy obtained by Landlord shall not be contributory and shall not provide primary insurance.

(b) **Property and Rental Income Insurance.** During the Lease Term, Landlord shall maintain policies of insurance covering loss of or damage to the Property in the full amount of its replacement value. Such policy shall provide protection against loss or damage due to fire or other casualties covered within the classification of fire standard extended coverage, vandalism, malicious mischief, sprinkler leakage and any other perils which Landlord deems reasonably necessary. Landlord shall have the right to obtain terrorism, flood and earthquake insurance and other forms of insurance as required by any lender holding a security interest in the Property. Landlord shall not obtain insurance for Tenant's fixtures or equipment or building improvements installed by Tenant on the Property. During the Lease Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year's Base Rent, plus estimated real property taxes and insurance premiums. Tenant shall be liable for the payment of any deductible amount under Landlord's or Tenant's insurance policies maintained pursuant to this Section 4.04; provided however Landlord's insurance deductible shall not exceed Ten Thousand Dollars ($10,000). Tenant shall not do or permit anything to be done which invalidates any such insurance policies. Upon Tenant's request, Landlord shall provide Tenant a certificate evidencing such insurance.

(c) **Payment of Premiums.** Subject to Section 4.07, Tenant shall pay all premiums for the insurance policies described in Paragraphs 4.04 (a) and (b) (whether obtained by Landlord or Tenant) within fifteen (15) days after Tenant's receipt of a copy of the premium statement or other evidence of the amount due, except Landlord shall pay all premiums for non-primary comprehensive public liability insurance which Landlord elects to obtain as provided in Paragraph 4.04(a). If insurance policies maintained by Landlord cover improvements on real property other than the Property, Landlord shall deliver to Tenant a statement of the premium applicable to the Property showing in reasonable detail how Tenant's share of the premium was computed. If the Lease Term expires before the expiration of an insurance policy maintained by Landlord, Tenant shall be liable for Tenant's prorated share of the insurance premiums. Before the Commencement Date, Tenant shall deliver to Landlord a copy of any policy of insurance which Tenant is required to maintain under this Section 4.04. At least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord a renewal of such policy. As an alternative to providing a policy of insurance, Tenant shall have the right to provide Landlord a certificate of insurance, executed by an authorized officer of the insurance company, showing that the insurance which Tenant is required to maintain under this Section 4.04 is in full force and effect and containing such other information which Landlord reasonably requires.

(d) **General Insurance Provisions.**

(i) Any insurance which Tenant is required to maintain under this Lease shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(ii) If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is cancelled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.

(iii) Landlord and Tenant shall maintain all insurance required under this Lease with companies holding a "General Policy Rating" of A-12 or better, as set forth in the most current issue of "Best Key Rating Guide". Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 4.04 may not be available in the future. Tenant acknowledges that the insurance described in this Section 4.04 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant or Landlord is unable to maintain the insurance required under the Lease, Landlord and Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall obtain any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

(iv) Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation. Landlord's and Tenant's insurance policies described in this Section shall contain a provision waiving the carrier's right to subrogation.

Section 4.05. **Late Charges.** Tenant's failure to pay rent promptly may cause Landlord to incur unanticipated costs. The exact amount of such costs are impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by any ground lease, mortgage or trust deed encumbering the Property. Therefore, if Landlord does not receive any rent payment within ten (10) days after it becomes due, provided Landlord has given Tenant forth-eight (48) hours written notice and Tenant has still failed to pay such Base Rent (which forty-eight (48) shall run concurrently with such ten (10) day period), Tenant shall pay Landlord a late charge equal to eight percent (8%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment.

Section 4.06. **Interest on Past Due Obligations.** Any amount owed by one party hereunder to the other which is not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the due date of such amount. However, interest shall not be payable on late charges to be paid by Tenant under this Lease. The payment of interest on such amounts shall not excuse or cure any default under this Lease. If the interest rate specified in this Lease is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

Section 4.07. **Impounds for Insurance Premiums and Real Property Taxes.** If Tenant is more than ten (10) days late in the payment of Base Rent more than twice in any consecutive twelve (12) -month period, Tenant shall pay Landlord a sum equal to one-twelfth (1/12) of the annual real property taxes and insurance premiums payable by Tenant under this Lease, together with each payment of Base Rent. Landlord shall hold such payments in a non-interest bearing impound account. If unknown, Landlord shall reasonably estimate the amount of real property taxes and insurance premiums when due. Tenant shall pay any deficiency of funds in the impound account to Landlord upon written request. If Tenant defaults under this Lease, Landlord may apply any funds in the impound account to any obligation then due under this Lease.

Section 4.08. **See Addendum.**

ARTICLE FIVE: **USE OF PROPERTY**

Section 5.01. **Permitted Uses.** Tenant may use the Property only for the Permitted Uses set forth in Section 1.06 above.

Section 5.02. **Manner of Use.** Tenant shall not cause or permit the Property to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, which annoys or interferes with the rights of other tenants of Landlord, or which constitutes a nuisance or waste. Tenant shall obtain and pay for all permits, including a Certificate of Occupancy, required for Tenant's occupancy of the Property and shall promptly

take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Property, including the Occupational Safety and Health Act.

See Addendum Section 5.02.

See Addendum Section 5.03.

Section 5.04. **Signs and Auctions.** Tenant shall not place any signs on the Property without Landlord's prior written consent. Tenant shall not conduct or permit any auctions or sheriff's sales at the Property.

See Addendum Section 5.04.

Section 5.05. **Indemnity.** Tenant shall indemnify Landlord against and hold Landlord harmless from any and all costs, claims or liability arising from: (a) Tenant's use of the Property; (b) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Property; (c) any breach or default in the performance of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; or (e) other acts or omissions of Tenant. Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs incurred by Landlord in connection with any such claim. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's or Landlord's employees', agents' or contractors' active negligence or willful misconduct. As used in this Section, the term "Tenant" shall include Tenant's employees, agents, contractors and invitees, if applicable.

See Addendum Section 5.05.

Section 5.06. **Landlord's Access.** Landlord or its agents may enter the Property at all reasonable times to show the Property to potential buyers, investors or tenants or other parties; to do any other act or to inspect and conduct tests in order to monitor Tenant's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material; or for any other purpose Landlord deems necessary. Landlord shall give Tenant 24-hour prior notice of such entry, except in the case of an emergency and Landlord agrees to allow a representative of Tenant to accompany Landlord and further agrees to comply with Tenant's reasonable security measures. Landlord may place customary "For Sale" or "For Lease" signs on the Property.

Section 5.07. **Quiet Possession.** If Tenant pays the rent and complies with all other terms of this Lease, Tenant may occupy and enjoy the Property for the full Lease Term, subject to the provisions of this Lease.

ARTICLE SIX: **CONDITION OF PROPERTY; MAINTENANCE, REPAIRS AND ALTERATIONS**

Section 6.01. **Existing Conditions.** Subject to the provisions of this Lease, Tenant accepts the Property in its condition as of the execution of the Lease, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Property or the suitability of the Property for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Property and is not relying on any representations of Landlord or any Broker with respect thereto. If Landlord or Landlord's Broker has provided a Property Information Sheet or other Disclosure Statement regarding the Property, a copy is attached as an exhibit to the Lease.

Section 6.02. **Exemption of Landlord from Liability.** Landlord shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant. Tenant's employees, invitees, customers or any other person in or about the Property, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Property or from other sources or places; or (d) any act or omission of any other tenant of Landlord. Landlord shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Tenant. The provisions of this Section 6.02 shall not, however, exempt Landlord from liability for Landlord's or Landlord's employees', agents' or contractors active negligence or willful misconduct.

Section 6.03. **Landlord's Obligations.** See Addendum Section 6.03.

Section 6.04. **Tenant's Obligations.**

(a) Except as provided in Section 6.03, Article Seven (Damage or Destruction) and Article Eight (Condemnation), Tenant shall keep all portions of the Property (including structural, nonstructural, interior, exterior, and landscaped areas, portions, systems and equipment) in good order, condition and repair (including interior repainting and refinishing, as needed). If any portion of the Property or any system or equipment in the Property which Tenant is obligated to repair cannot be fully repaired or restored, Tenant shall promptly replace such portion of the Property or system or equipment in the Property, regardless of whether the benefit of such replacement extends beyond the Lease Term; but if the benefit or useful life of such replacement extends beyond the Lease Term (as such term may be extended by exercise of any options), the useful life of such replacement shall be prorated over the remaining portion of the Lease Term (as extended), and Tenant shall be liable only for that portion of the cost which is applicable to the Lease Term (as extended). Tenant shall maintain a preventive maintenance contract providing for the regular inspection and maintenance of the heating and air conditioning system by a licensed heating and air conditioning contractor. Subject to the provisions of Section 4.04(d)(iv), if any part of the Property is damaged by any act or omission of Tenant, Tenant shall pay Landlord the cost of repairing or replacing such damaged property, whether or not Landlord would otherwise be obligated to pay the cost of maintaining or repairing such property. It is the intention of Landlord and Tenant that at all times Tenant shall maintain the portions of the Property which Tenant is obligated to maintain in an attractive, first-class and fully operative condition.

(b) Tenant shall fulfill all of Tenant's obligations under this Section 6.04 at Tenant's sole expense. If Tenant fails to maintain, repair or replace the Property as required by this Section 6.04 or is not using all reasonable efforts to do so, Landlord may, upon ten (10) days' prior notice to Tenant (except that no notice shall be required in the case of an emergency), enter the Property and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all costs incurred in performing such maintenance or repair immediately upon demand.

Section 6.05. **Alterations, Additions, and Improvements.**

(a) Tenant shall not make any alterations, additions, or improvements to the Property without Landlord's prior written consent, which shall not be unreasonably withheld except for non-structural alterations which do not exceed Sixty Thousand Dollars ($60,000) in cost per project and which are not visible from the outside of any building of which the Property is part. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph 6.05(a) upon Landlord's written request. All alterations, additions, and improvements shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, which shall not be unreasonably withheld. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

(b) Tenant shall pay when due all claims for labor and material furnished to or for the Tenant Group at the Property. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Property, regardless of whether Landlord's consent to such work is required. Landlord may elect to record and post notices of non-responsibility on the Property.

Section 6.06. **Condition upon Termination.** Upon the termination of the Lease, Tenant shall surrender the Property to Landlord, broom clean and in the same condition as received except for ordinary wear and tear which Tenant was not otherwise obligated to remedy under any provision of this Lease. However, Tenant shall not be obligated to repair any damage which Landlord is required to repair in accordance with the Lease. In addition, Landlord may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent) prior to the expiration of the Lease and to restore the Property to its prior condition, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant's trade fixtures, machinery or equipment which can be removed without material damage to the Property. Tenant shall repair, at Tenant's expense, any damage to the Property caused by the removal of any such trade fixtures, machinery or equipment. In no event, however, shall

Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent; any power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; or other similar building operating equipment and decorations.

See Addendum Section 6.06.

ARTICLE SEVEN: **DAMAGE OR DESTRUCTION**

Section 7.01. **Partial Damage to Property.**

(a) Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Property. If the Property is only partially damaged (i.e., less than fifty percent (50%) of the Property is untenantable as a result of such damage or less than fifty percent (50%) of Tenant's operations are materially impaired) and if the proceeds received by Landlord from the insurance policies described in Paragraph 4.04(b) are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, or improvements.

(b) If (i) Landlord has maintained the insurance required to be maintained under Paragraph 4.04(b) and the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair; (ii) the cause of the damage is not covered by such insurance policies; or (iii) the holder of any mortgage on the Property shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt. Landlord may elect either to (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate the Lease. If Landlord elects to repair the damage, Tenant shall pay Landlord the "deductible amount" (if any) under Landlord's insurance policies and, if the damage was due to an act or omission of Tenant, or Tenant's employees, agents, contractors or invitees, the difference between the actual cost of repair and any insurance proceeds received by Landlord. If Landlord elects to terminate this Lease, Tenant may elect to continue this Lease in full force and effect, in which case Tenant shall repair any damage to the Property and any building in which the Property is located. Tenant shall pay the cost of such repairs, except that upon satisfactory completion of such repairs, Landlord shall deliver to Tenant any insurance proceeds received by Landlord for the damage repaired by Tenant. Tenant shall give Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice.

(c) If the damage to the Property occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease shall give written notification to the other party of such election within thirty (30) days after Tenant's notice to Landlord of the occurrence of the damage.

Section 7.02. **Substantial or Total Destruction.** If the Property is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Property is greater than partial damage as described in Section 7.01), and regardless of whether Landlord receives any insurance proceeds, this Lease shall terminate the later of the (i) date the destruction occurred and (ii) the date Tenant ceases to do business at the Property. Notwithstanding the preceding sentence, if the Property can be rebuilt within six (6) months after the date of destruction, Landlord may elect to rebuild the Property at Landlord's own expense, in which case this Lease shall remain in full force and effect. Landlord shall notify Tenant of such election within thirty (30) days after Tenant's notice of the occurrence of total or substantial destruction. If Landlord so elects, Landlord shall rebuild the Property at Landlord's sole expense, except that if the destruction was caused by an act or omission of Tenant, Tenant shall pay Landlord the difference between the actual cost of rebuilding and any insurance proceeds received by Landlord.

Section 7.03. **Temporary Reduction of Rent.** If the Property is destroyed or damaged and Landlord or Tenant repairs or restores the Property pursuant to the provisions of this Article Seven, any rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Property is impaired. Except for such possible reduction in Base Rent, insurance premiums and real property taxes,

Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Property.

Section 7.04. **Waiver.** Tenant waives the protection of any statute, code or judicial decision which grants a tenant the right to terminate a lease in the event of the substantial or total destruction of the leased property. Tenant agrees that the provisions of Section 7.02 above shall govern the rights and obligations of Landlord and Tenant in the event of any substantial or total destruction to the Property.

ARTICLE EIGHT: **CONDEMNATION**

If all or any portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called "Condemnation"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the building in which the Property is located, or which is located on the Property, is taken, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor Tenant terminates this Lease, this Lease shall remain in effect as to the portion of the Property not taken, except that the Base Rent and Additional Rent shall be reduced in proportion to the reduction in the floor area of the Property. Any Condemnation award or payment shall be distributed in the following order: (a) first, to any ground lessor, mortgagee or beneficiary under a deed of trust encumbering the Property, the amount of its interest in the Property; (b) second, to Tenant, only the amount of any award specifically designated for loss of or damage to Tenant's trade fixtures or removable personal property; and (c) third, to Landlord, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. If this Lease is not terminated, Landlord shall repair any damage to the Property caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair at Landlord's expense.

ARTICLE NINE: **ASSIGNMENT AND SUBLETTING**

Section 9.01. **Landlord's Consent Required.** no portion of the Property or of Tenant's interest in this Lease may be acquired by any other person or entity, whether by sale, assignment, mortgage, sublease, transfer, operation of law, or act of Tenant, without Landlord's prior written consent, except as provided in Section 9.02 below. Landlord has the right to grant or withhold its consent as provided in Section 9.05 below. Any attempted transfer without consent shall be void and shall constitute a non-curable breach of this Lease.

Section 9.02. **Tenant Affiliate.**

See Addendum Section 9.02.

Section 9.03. **No Release of Tenant.** No transfer permitted by this Article Nine, whether with or without Landlord's consent, shall release Tenant or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article Nine. Consent to one transfer is not a consent to any subsequent transfer. If Tenant's transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to subsequent assignments or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under this Lease.

Section 9.04. **Offer to Terminate.** If Tenant desires to assign the Lease or sublease all of the Property, and if Landlord elects in writing to terminate this Lease pursuant to Section 9.05, the Lease shall terminate as of the commencement date of a new lease between Landlord and the proposed assignee or subtenant and all the terms and provisions of the Lease governing termination shall apply. If Landlord does not so elect, the Lease shall continue in effect until otherwise terminated and the provisions of Section 9.05 with respect to any proposed transfer shall continue to apply.

Section 9.05. **Landlord's Consent.**

(a) Tenant's request for consent to any transfer described in Section 9.01 shall set forth in writing the details of the proposed transfer, including the name, business and financial condition of the prospective transferee, financial details of the proposed transfer (e.g., the term of and the rent and security deposit payable under any proposed assignment or sublease), and any other information Landlord reasonably deems relevant. Landlord shall have the right to elect to terminate this Lease or to withhold consent, if reasonable, or to grant consent, based on the following factors: (i) the business of the proposed assignee or subtenant and the proposed use of the Property; (ii) the net worth and financial reputation of the proposed assignee or subtenant; and (iii) Tenant's compliance with all of its obligations under the Lease. If Landlord objects to a proposed assignment solely because of the net worth and/or financial reputation of the proposed assignee, Tenant may nonetheless sublease (but not assign), all or a portion of the Property to the proposed transferee, but only on the other terms of the proposed transfer.

(b) If Tenant assigns or subleases, the following shall apply:

(i) If Tenant assigns or subleases more than seventy percent (70%) of the building located on the Property in the aggregate, then Tenant shall pay to Landlord as Additional Rent under the Lease the Landlord's Share (stated in Section 1.13) of the Profit (defined below) on such transaction as and when received by Tenant, unless Landlord gives written notice to Tenant and the assignee or subtenant that Landlord's Share shall be paid by the assignee or subtenant to Landlord directly. The "Profit" means (A) all amounts paid to Tenant for such assignment or sublease, including "key" money, monthly rent in excess of the monthly rent payable under the Lease, and all fees and other consideration paid for the assignment or sublease, including fees under any collateral agreements, less (B) costs and expenses directly incurred by Tenant in connection with the execution and performance of such assignment or sublease for real estate broker's commissions and costs of renovation or construction of such assignment or sublease for real estate broker's commissions and costs of renovation or construction of tenant improvements required under such assignment or sublease. Tenant is entitled to recover such costs and expenses before Tenant is obligated to pay the Landlord's Share to Landlord. The Profit in the case of a sublease of less than all the Property is the rent allocable to the subleased space as a percentage on a square footage basis.

(ii) Tenant shall provide Landlord a written statement certifying all amounts to be paid from any assignment or sublease of the Property within thirty (30) days after the transaction documentation is signed, and Landlord may inspect Tenant's relevant books and records to verify the accuracy of such statement. On written request, Tenant shall promptly furnish to Landlord copies of all the transaction documentation, all of which shall be certified by Tenant to be complete, true and correct. Landlord's receipt of Landlord's Share shall not be a consent to any further assignment or subletting. The breach of Tenant's obligation under this Paragraph 9.05(b) shall be a material default of the Lease.

Section 9.06. **No Merger.** no merger shall result from Tenant's sublease of the Property under this Article Nine, Tenant's surrender of this Lease or the termination of this Lease in any other manner. In any such event, Landlord may terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord under any or all subtenancies.

ARTICLE TEN: **DEFAULTS; REMEDIES**

Section 10.01. **Covenants and Conditions.** Tenant's and Landlord's performance of each obligation under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Property is conditioned upon Tenant's performance. Time is of the essence in the performance of all covenants and conditions.

Section 10.02. **Defaults.** Tenant shall be in material default under this Lease.

(a) If Tenant fails to pay rent and abandons the Property or if Tenant's vacation of the Property results in the cancellation of any insurance described in Section 4.04;

(b) If Tenant fails to pay rent when due or any other charge within ten (10) days from receipt of such bill or statement from Landlord;

(c) If Tenant fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more than thirty (30) days are required to complete

such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30)–day period and thereafter diligently pursues its completion. The notice required by this Paragraph is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement.

(d) (i) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (3) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as Additional Rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the rent payable by Tenant under this Lease.

(e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any potion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

Section 10.03. **Remedies.** On the occurrence of any material default by Tenant, Landlord may, at any time thereafter, following three (3) days written notice or demand (which may be in the form of a three (3) day notice to pay rent or quit and which time may run concurrently therewith) and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

(a) Terminate Tenant's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. If Tenant shall be served with a demand for the payment of past due rent or any other charge, any payments rendered thereafter to cure any default by Tenant shall be made only by cashier's check. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including (i) the worth at the time of the award of the unpaid Base Rent, Additional Rent and other charges which Landlord had earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Landlord would have earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Tenant would have paid for the balance of the Lease term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses Landlord incurs in maintaining or preserving the Property after such default, the costs of recovering possession of the Property, expenses of reletting, including necessary renovation or alteration of the Property, Landlord's reasonable attorneys' fees incurred in connection therewith, and any real estate commission paid or payable. As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the rate of fifteen percent (15%) per annum, or such lesser amount as may then be the maximum lawful rate. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). If Tenant has abandoned the Property, Landlord shall have the option of (i) retaking possession of the Property and recovering from Tenant the amount specified in this Paragraph 10.03(a), and/or (ii) proceeding under Paragraph 10.03(b);

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Property. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due. Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations);

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Property is located.

Section 10.04. Intentionally Deleted.

Section 10.05. **Automatic Termination.** Notwithstanding any other term or provision hereof to the contrary, the Lease shall terminate on the occurrence of any act which affirms the Landlord's intention to terminate the Lease as provided in Section 10.03 hereof, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonably attorneys' fees that Landlord incurs in connection with the filing, commencement, pursuing and/or defending of any action in any bankruptcy court or other court with respect to the Lease; the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant; or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Base Rent and other rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Section 10.06. **Cumulative Remedies.** Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

ARTICLE ELEVEN: **PROTECTION OF LENDERS**

Section 11.01. **Subordination.** Landlord shall have the right to subordinate this Lease to any ground lease, deed of trust or mortgage encumbering the Property, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Tenant shall cooperate with Landlord and any lender which is acquiring a security interest in the Property or the Lease. Tenant shall execute such further documents and assurances as such lender may require in the form attached hereto as Exhibit "B" or such other form as is then required by Landlord's lender, provided that such agreement contains a non-disturbance agreement in favor of Tenant and provided further that Tenant's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Tenant shall not be deprived of its rights under this Lease. Tenant's right to quiet possession of the Property during the Lease Term shall not be disturbed if Tenant pays the rent and performs all of Tenant's obligations under this Lease and is not otherwise in default. If any ground lessor, beneficiary or mortgagee elects to have this Lease prior to the lien of its ground lease, deed of trust or mortgage and gives written notice thereof to Tenant, this Lease shall be deemed prior to such ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof.

See Addendum Section 11.01.

Section 11.02. **Attornment.** If Landlord's interest in the Property is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Property and recognize such transferee or successor as Landlord under this Lease. Tenant waives the protection of any current or future statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Property upon the transfer of Landlord's interest.

Section 11.03. **Signing of Documents.** Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so provided that such agreement include a non-disturbance provision in favor of Tenant. If Tenant fails to do so within fifteen (15) days after written request, Tenant hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of Tenant to execute and deliver any such instrument or document so long as such instrument complies with the provisions of this ARTICLE ELEVEN.

Section 11.04. **Estoppel Certificates.**

(a) Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement in the form attached hereto as Exhibit "C" or such other form as is then required by Landlord's lender, certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not

in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or the Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Tenant shall deliver such statement to Landlord within fifteen (15) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

(b) If Tenant does not deliver such statement to Landlord within such fifteen (15)–day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

Section 11.04(c). See Addendum.

Section 11.05. **Tenant's Financial Condition.** Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord Tenant's then existing financial statements to verify the net worth of Tenant or any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Property. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. Al financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

See Addendum Section 11.05.

ARTICLE TWELVE: **LEGAL COSTS**

Section 12.01. **Legal Proceedings.** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any costs or expenses that the Nondefaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Property by license of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant Group; (c) otherwise arising out of or resulting from any act or transaction of Tenant Group; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election. Tenant shall reimburse Landlord for any legal fees or costs Landlord reasonably incurs in any such claim or action.

Section 12.02. **Landlord's Consent.** Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under Article Nine (Assignment and Subletting), or in connection with any other act which Tenant proposes to do and which requires Landlord's consent.

ARTICLE THIRTEEN: **MISCELLANEOUS PROVISIONS**

Section 13.01. **Non-Discrimination.** Tenant promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, sex, creed, national origin or ancestry in the leasing, subleasing, transferring, occupancy, tenure or use of the Property or any portion thereof.

Section 13.02. **Landlord's Liability; Certain Duties.**

(a) As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Property or the leasehold estate under a ground lease of the Property at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest is relieved of al liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer provided the transferee assumes all of Landlord's obligations from the date of transfer. However, each Landlord shall deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this Lease.

(b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Property whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30) –day period and thereafter diligently pursued to completion.

(c) Notwithstanding any term or provision herein to the contrary, the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Property, and neither the Landlord nor its partners, shareholders, officers or other principals shall have any personal liability under this Lease.

Section 13.03. **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

Section 13.04. **Interpretation.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Property with Tenant's expressed or implied permission.

Section 13.05. **Incorporation of Prior Agreements; Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Property and no other agreements are effective. All amendments to this Lease shall be in writing and singed by all parties. Any other attempted amendment shall be void.

Section 13.06. **Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by national overnight carrier or certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered to the address specified in Section 1.03 above. Notices to Landlord shall be delivered to the address specified in Section 1.02 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.07. **Waivers.** All waivers must be in writing and signed by the waiving party. Landlord's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. no statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.08. **No Recordation.** Tenant shall not record this Lease without prior written consent from Landlord. However, either Landlord or Tenant may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring such recording shall pay all transfer taxes and recording fees.

Section 13.09. **Binding Effect; Choice of Law.** This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. The laws of the state in which the Property is located shall govern this Lease.

Section 13.10. **Corporate Authority; Partnership Authority.** If Tenant is a corporation, such corporation represents and warrants that each person signing this Lease on behalf of Tenant has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership or certificate of limited partnership.

Section 13.11. **Joint and Several Liability.** Intentionally Deleted.

Section 13.12. See Addendum Section 13.12.

Section 13.13. **Execution of Lease.** This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 13.14. **Survival.** All representations and warranties of Landlord and Tenant shall survive the termination of this Lease.

ARTICLE FOURTEEN: **BROKERS**

Section 14.01. **Broker's Fee.** When this Lease is signed by and delivered to both Landlord and Tenant, Landlord shall pay a real estate commission to Landlord's Broker named in Section 1.08 above, if any, as provided in the written agreement between Landlord and Landlord's Broker, or the sum stated in Section 1.09 above for services rendered to Landlord by Landlord's Broker in this transaction. Landlord shall pay Landlord's Broker a commission if Tenant exercises any option to extend the Lease Term or to buy the Property, or any similar option or right which Landlord may grant to Tenant, or if Landlord's Broker is the procuring cause of any other lease or sale entered into between Landlord and Tenant covering the Property. Such commission shall be the amount set forth in Landlord's Broker's commission schedule in effect as of the execution of this Lease. If a Tenant's Broker is named in Section 1.08 above, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if so provided in any agreement between Landlord's Broker and Tenant's Broker. Nothing contained in this Lease shall impose any obligation on Landlord to pay a commission or fee to any party other than Landlord's Broker.

Section 14.02. **Protection of Brokers.** If Landlord sells the Property, or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Property or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article Fourteen. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this provision. The prevailing party in such action shall be entitled to reasonably attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Paragraph is included in this Lease for the benefit of Landlord's Broker.

Section 14.03. **Broker's Disclosure of Agency.** Landlord's Broker hereby discloses to Landlord and Tenant and Landlord and Tenant hereby consent to Landlord's Broker acting in this transaction as the agent of (check one):

☒ Landlord exclusively; or

☐ both Landlord and Tenant.

Section 14.04. **No Other Brokers.** Tenant represents and warrants to Landlord that the brokers named in Section 1.08 above are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease or the Property.

ADDITIONAL PROVISIONS MAY BE SET FORTH IN A RIDER OR RIDERS ATTACHED HERETO OR IN THE BLANK SPACE BELOW. IF NO ADDITIONAL PROVISIONS ARE INSERTED, PLEASE DRAW A LINE THROUGH THE SPACE BELOW.

Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below and have initialed all Riders which are attached to or incorporated by reference in this Lease.

"LANDLORD"

Signed on _____, 19 ____

at _____.

MAJESTIC-MAPA PROPERTIES, LLC, a California limited liability company

By: MAJESTIC REALTY CO., a California corporation, its manager

By: /s/ David A. Wheeler

Its: President

By: /s/ Jay H. Bradford

Its: Executive Vice President and Chief Financial Officer

"TENANT"

Signed on _____, 19 ____

at _____.

GILEAD SCIENCES, Inc. a Delaware corporation

By: /s/ Anthony D. Caracciolo

Its: _____

By: /s/ Mark L. Perry

Its: Executive Vice President, Operations

IN ANY REAL ESTATE TRANSACTION, IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

THIS PRINTED FORM LEASE HAS BEEN DRAFTED BY LEGAL COUNSEL AT THE DIRECTION OF THE SOUTHERN CALIFORNIA CHAPTER OF THE SOCIETY OF INDUSTRIAL AND OFFICE REALTORS,® INC. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE SOUTHERN CALIFORNIA CHAPTER OF THE SOCIETY OF INDUSTRIAL AND OFFICE REALTORS,® INC., ITS LEGAL COUNSEL, THE REAL ESTATE BROKERS NAMED HEREIN, OR THEIR EMPLOYEES OR AGENTS, AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS LEASE OR OF THIS TRANSACTION. LANDLORD AND TENANT SHOULD RETAIN LEGAL COUNSEL TO ADVISE THEM ON SUCH MATTERS AND SHOULD RELY UPON THE ADVICE OF SUCH LEGAL COUNSEL.

Southern California Chapter of the
Society of Industrial and Office Realtors, ® Inc.

INDUSTRIAL REAL ESTATE LEASE
(SINGLE-TENANT FACILITY)

ARTICLE ONE. **BASIC TERMS**

This Article One contains the Basic Terms of this Lease between the Landlord and Tenant named below. Other Articles, Sections and Paragraphs of the Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01 **Date of Lease** : February 24, 2003

Section 1.02 **Landlord** (include legal entity): MAJESTIC-MAPA PROPERTIES, LLC, a California limited liability company

Address of Landlord: 13191 Crossroads Parkway, North, 6 th Floor
City of Industry, CA 91746

Section 1.03 **Tenant** (include legal entity): GILEAD SCIENCES, INC., a Delaware corporation

Address of Tenant: 333 Lakeside Drive
Foster City, CA 94404

Section 1.04 **Property:** (includes street address, approximate square footage and description) that approximately 51,500 square foot building more commonly known as 650 Cliffside Drive, San Dimas, California as outlined in red on Exhibit "A", subject to the non-exclusive use of such area outlined in green.

Section 1.05 **Lease Term:** 10 years 6 months beginning on June 1, 2003 or such other date as is specified in this Lease, and ending on November 30, 2013:

Section 1.06 **Permitted Uses** : (See Article Five) Only for general office, laboratory, warehousing and manufacturing of pharmaceutical products.

Section 1.07 **Tenant's Guarantor** : (If none, so state) None

Section 1.08 **Brokers** : (See Article Fourteen) (If none, so state)

Landlord's Broker: Majestic Realty Co.

Tenant's Broker: None

Section 1.09 Commission Payable to Landlord's Broker: (See Article Fourteen) $ per separate agreement

Section 1.10 **Initial Security Deposit** : (See Section 3.03) $59,225.00

Section 1.11 **Vehicle Parking Spaces Allocated to Tenant** : per Exhibit "A"

Section 1.12 **Rent and Other Charges Payable by Tenant** :

(a) BASE RENT: FIFTY-NINE THOUSAND TWO HUNDRED TWENTY-FIVE AND NO/100 --- Dollars ($59,225.00) per month for the first sixty (60) months, as provided in Section 3.01, and shall be increased on the first day of the sixty-first (61 st) month(s) after the Commencement Date, SIXTY-FIVE THOUSAND ONE HUNDRED FORTY-SEVEN AND 50/100 DOLLARS ($65,147.50).

(b) OTHER PERIODIC PAYMENTS: (i) Real Property Taxes (See Section 4.02); (ii) Utilities (See Section 4.03); (iii) Insurance Premium (See Section 4.04); (iv) Impounds for Insurance Premiums and Property Taxes (See Section 4.07); (v) Maintenance, Repairs and Alterations (See Article Six).

Section 1.13 **Landlord's Share of Profit on Assignment or Sublease** : (See Section 9.05) fifty percent (50%) of the Profit (the "Landlord's Share").

Section 1.14 **Riders** . The following Riders are attached to and made a part of this Lease. (If none, so state)

Addendum pages 1 through 11, and Exhibits "A", "B", "C" and "D"

ARTICLE TWO. **LEASE TERM**

Section 2.01 **Lease of Property For Lease Term** . Landlord leases the Property to Tenant and Tenant leases the Property from Landlord for the Lease Term. The Lease Term is for the period stated in Section 1.05 above and shall begin and end on the dates specified in Section 1.05 above, unless the beginning or end of the Lease Term is changed under any provision of this Lease. The "Commencement Date" shall be the date specified in Section 1.05 above for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease.

Section 2.02 See Addendum Section 2.02

Section 2.03 Intentionally Deleted.

Section 2.04 **Holding Over.** Tenant shall vacate the Property upon the expiration or earlier termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Property. If Tenant does not vacate the Property upon the expiration or earlier termination of the Lease and Landlord thereafter accepts rent from Tenant, Tenant's occupancy of the Property shall be a "month-to-month" tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the Base Rent then in effect shall be increased by twenty-five percent (25%).

Section 2.05 See Addendum.

ARTICLE THREE. **BASE RENT**

Section 3.01 **Time and Manner of Payment.** Upon execution of this Lease, Tenant shall pay Landlord the Base Rent in the amount stated in Paragraph 1.12(a) above for the first month of the Lease Term. On the first day of the second month of the Lease Term and each month thereafter, Tenant shall pay Landlord the Base Rent, in advance, without offset, deduction or prior demand. The Base Rent shall be payable at Landlord's address or at such other place as Landlord may designate in writing.

Section 3.02 Intentionally Deleted.

Section 3.03 **Security Deposit; increases.**

(a) Upon the execution of this Lease, Tenant shall deposit with Landlord a cash Security Deposit in the amount set forth in Section 1.10 above. Landlord may apply all or part of the Security Deposit to any unpaid rent or other charges due from Tenant or to cure any other defaults of Tenant. If Landlord uses any part of the

Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (10) days after Landlord's written request. Tenant's failure to do so shall be a material default under this Lease. No interest shall be paid on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit.

(b) Each time the Base Rent is increased, Tenant shall deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the adjusted Base Rent as the initial Security Deposit bore to the initial Base Rent.

Section 3.04 **Termination; Advance Payments.** Upon termination of this Lease under Article Seven (Damage or Destruction), Article Eight (Condemnation) or any other termination not resulting from Tenant's default, and after Tenant has vacated the Property in the manner required by this Lease, Landlord shall (within sixty (60) days from Tenant delivering exclusive possession of the Property to Landlord) refund to Tenant (or Tenant's successor) the unused portion of the Security Deposit, any advance rent or other advance payments made by Tenant to Landlord, and any amounts paid for real property taxes and other reserves which apply to any time periods after termination of the Lease.

ARTICLE FOUR. **OTHER CHARGES PAYABLE BY TENANT**

Section 4.01 **Additional Rent.** All charges payable by Tenant other than Base Rent are called "Additional Rent." Unless this Lease provides otherwise, Tenant shall pay all Additional Rent then due with the next monthly installment of Base Rent. The term "rent" shall mean Base Rent and Additional Rent.

Section 4.02 **Property Taxes.**

(a) **Real Property Taxes.** Tenant shall pay all real property taxes on the Property (including any fees, taxes or assessments against, or as a result of , any tenant improvements installed on the Property by or for the benefit of Tenant) during the Lease Term. Subject to Paragraph 4.02(c) and Section 4.07 below, such payment shall be made at least ten (10) -days prior to the delinquency date of the taxes. Within such ten (10)-day period, Tenant shall furnish Landlord with satisfactory evidence that the real property taxes have been paid. Landlord shall reimburse Tenant for any real property taxes paid by Tenant covering any period of time prior to or after the Lease Term. If Tenant fails to pay the real property taxes when due, Landlord may pay the taxes and Tenant shall reimburse Landlord for the amount of such tax payment as Additional Rent.

(b) **Definition of "Real Property Tax."** "Real property tax" means: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty (to the extent caused by Tenant's acts or omissions) or tax imposed by any taxing authority against the Property; (ii) any tax on the Landlord's right to receive, or the receipt of, rent or income from the Property or against Landlord's business of leasing the Property; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Property by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Property due to a change of ownership, as defined by applicable law, or other transfer of all or part of Landlord's interest in the Property; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Real property tax" does not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

(c) **Joint Assessment.** If the Property is not separately assessed, Landlord shall reasonably determine Tenant's share of the real property tax payable by Tenant under Paragraph 4.02(a) from the assessor's worksheets or other reasonably available information. Tenant shall pay such share to Landlord within fifteen (15) days after receipt of Landlord's written statement.

(d) **Personal Property Taxes.**

(i) Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall try to have personal property taxed separately from the Property.

(ii) If any of Tenant's personal property is taxed with the Property, Tenant shall pay Landlord the taxes for the personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes.

(e) **Tenant's Right to Contest Taxes.** Tenant may attempt to have the assessed valuation of the Property reduced or may initiate proceedings to contest the real property taxes. If required by law, Landlord shall join in the proceedings brought by Tenant. However, Tenant shall pay all costs of the proceedings, including any costs or fees incurred by Landlord. Upon the final determination of any proceeding or contest, Tenant shall immediately pay the real property taxes due, together with all costs, charges, interest and penalties incidental to the proceedings. If Tenant does not pay the real property taxes when due and contests such taxes, Tenant shall not be in default under this Lease for nonpayment of such taxes if Tenant deposits funds with Landlord or opens an interest-bearing account reasonably acceptable to Landlord in the joint names of Landlord and Tenant. The amount of such deposit shall be sufficient to pay the real property taxes plus a reasonable estimate of the interest, costs, charges and penalties which may accrue if Tenant's action is unsuccessful, less any applicable tax impounds previously paid by Tenant to Landlord. The deposit shall be applied to the real property taxes due, as determined at such proceedings. The real property taxes shall be paid under protest from such deposit if such payment under protest is necessary to prevent the Property from being sold under a "tax sale" or similar enforcement proceeding.

Section 4.03 **Utilities.** Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Property. However, if any services or utilities are jointly metered with other property, Landlord shall make a reasonable determination of Tenant's proportionate share of the cost of such utilities and services and Tenant shall pay such share to landlord within fifteen (15) days after receipt of Landlord's written statement.

Section 4.04 **Insurance Policies.**

(a) **Liability Insurance.** During the Lease Term, Tenant shall maintain a policy of commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Property. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be Three Million Dollars ($3,000,000) per occurrence and shall be subject to periodic increase based upon industry standards for similar facilities. The liability insurance obtained by Tenant under this Paragraph 4.04(a) shall (i) be primary and non-contributing; (ii) contain cross-liability endorsements; and (iii) insure Landlord against Tenant's performance under Section 5.05, if the matters giving rise to the indemnity under Section 5.05 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease. Landlord may also obtain comprehensive public liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Property. The policy obtained by Landlord shall not be contributory and shall not provide primary insurance.

(b) **Property and Rental Income Insurance.** During the Lease Term, Landlord shall maintain policies of insurance covering loss of or damage to the Property in the full amount of its replacement value. Such policy shall provide protection against loss or damage due to fire or other casualties covered within the classification of fire standard extended coverage, vandalism, malicious mischief, sprinkler leakage and any other perils which landlord deems reasonably necessary. Landlord shall have the right to obtain terrorism, flood and earthquake insurance and other forms of insurance as required by any lender holding a security interest in the Property. Landlord shall not obtain insurance for Tenant's fixtures or equipment or building improvements installed by Tenant

on the Property. During the Lease Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year's Base Rent, plus estimated real property taxes and insurance premiums. Tenant shall be liable for the payment of any deductible amount under Landlord's or Tenant's insurance policies maintained pursuant to this Section 4.04; provided however Landlord's insurance deductible shall not exceed Ten Thousand Dollars ($10,000). Tenant shall not do or permit anything to be done which invalidates any such insurance policies. Upon Tenant's request, Landlord shall provide Tenant a certificate evidencing such insurance.

(c) **Payment of Premiums.** Subject to Section 4.07, Tenant shall pay all premiums for the insurance policies described in Paragraphs 4.04(a) and (b) (whether obtained by Landlord or Tenant) within fifteen (15) days after Tenant's receipt of a copy of the premium statement or other evidence of the amount due, except Landlord shall pay all premiums for non-primary comprehensive public liability insurance which Landlord elects to obtain as provided in Paragraph 4.04(a). If insurance policies maintained by Landlord cover improvements on real property other than the Property, Landlord shall deliver to Tenant a statement of the premium applicable to the Property showing in reasonable detail how Tenant's share of the premium was computed. If the Lease Term expires before the expiration of an insurance policy maintained by Landlord, Tenant shall be liable for Tenant's prorated share of the insurance premiums. Before the Commencement Date, Tenant shall deliver to Landlord a copy of any policy of insurance which Tenant is required to maintain under this Section 4.04. At least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord a renewal of such policy. As an alternative to providing a policy of insurance, Tenant shall have the right to provide Landlord a certificate of insurance, executed by an authorized officer of the insurance company, showing that the insurance which Tenant is required to maintain under this Section 4.04 is in full force and effect and containing such other information which Landlord reasonably requires.

(d) **General Insurance Provisions.**

(i) Any insurance which Tenant is required to maintain under this Lease shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(ii) If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is cancelled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.

(iii) Landlord and Tenant shall maintain all insurance required under this Lease with companies holding a "General Policy Rating" of A-12 or better, as set forth in the most current issue of "Best Key Rating Guide." Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 4.04 may not be available in the future. Tenant acknowledges that the insurance describe in this Section 4.04 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant or Landlord is unable to maintain the insurance required under the Lease, Landlord and Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall obtain any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

(iv) Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of

subrogation. Landlord's and Tenant's insurance policies described in this Section shall contain a provision waiving the carrier's right to subrogation.

Section 4.05 **Late Charges.** Tenant's failure to pay rent promptly may cause Landlord to incur unanticipated costs. The exact amount of such costs are impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by any ground lease, mortgage or trust deed encumbering the Property. Therefore, if Landlord does not receive any rent payment within ten (10) days after it becomes due, provided Landlord has given Tenant forty-eight (48) hours written notice and Tenant has still failed to pay such Base Rent (which forty-eight (48) shall run concurrently with such ten (10) day period), Tenant shall pay Landlord a late charge equal to eight percent (8%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment.

Section 4.06 **Interest on Past Due Obligations.** Any amount owed by one party hereunder to the other which is not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the due date of such amount. However, interest shall not be payable on late charges to be paid by Tenant under this Lease. The payment of interest on such amounts shall not excuse or cure any default under this Lease. If the interest rate specified in this Lease is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

Section 4.07 **Impounds for Insurance Premiums and Real Property Taxes. If** Tenant is more than ten (10) days late in the payment of Base Rent more than twice in any consecutive twelve (12) -month period, Tenant shall pay Landlord a sum equal to one-twelfth (1/12) of the annual real property taxes and insurance premiums payable by Tenant under this Lease, together with each payment of Base Rent. Landlord shall hold such payments in a non-interest bearing impound account. If unknown, Landlord shall reasonably estimate the amount of real property taxes and insurance premiums when due. Tenant shall pay any deficiency of funds in the impound account to Landlord upon written request. If Tenant defaults under this Lease, Landlord may apply any funds in the impound account to any obligation then due under this Lease.

Section 4.08 See Addendum.

ARTICLE FIVE. **USE OF PROPERTY**

Section 5.01 **Permitted Uses.** Tenant may use the Property only for the Permitted Uses set forth in Section 1.06 above.

Section 5.02 **Manner of Use.** Tenant shall not cause or permit the Property to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, which annoys or interferes with the rights of other tenants of Landlord, or which constitutes a nuisance or waste. Tenant shall obtain and pay for all permits, including a Certificate of Occupancy, required for Tenant's occupancy of the Property and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Property, including the Occupational Safety and Health Act.

See Addendum Section 5.02.

Section 5.03 See Addendum Section 5.03.

Section 5.04 **Signs and Auctions.** Tenant shall not place any signs on the Property without Landlord's prior written consent. Tenant shall not conduct or permit any auctions or sheriff's sales at the Property.

See Addendum Section 5.04.

Section 5.05 **Indemnity.** Tenant shall indemnify Landlord against and hold Landlord harmless from any and all costs, claims or liability arising from: (a) Tenant's use of the Property; (b) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Property; (c) any breach or default in the performance of Tenant's obligations under this Lease; (d) any misrepresentations or breach of warranty by Tenant under this lease; or (e) other acts or omissions of Tenant. Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs incurred by Landlord in connection with any such claim. As a material part of the consideration to landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's or Landlord's employees', agents' or contractors' active negligence or willful misconduct. As used in this Section, the term "Tenant" shall include Tenant's employees, agents, contractors and invitees, if applicable.

See Addendum Section 5.05.

Section 5.06 **Landlord's Access.** Landlord or its agents may enter the Property at all reasonable times to show the Property to potential buyers, investors or tenants or other parties; to do any other act or to inspect and conduct tests in order to monitor Tenant's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material; or for any other purpose Landlord deems necessary. Landlord shall give Tenant 24-hour prior notice of such entry, except in the case of an emergency and Landlord agrees to allow a representative of Tenant to accompany Landlord and further agrees to comply with Tenant's reasonable security measures. Landlord may place customary "For Sale" or "For Lease" signs on the Property.

Section 5.07 **Quiet Possession.** If Tenant pays the rent and complies with all other terms of this Lease, Tenant may occupy and enjoy the Property for the full Lease Term, subject to the provisions of this Lease.

ARTICLE SIX. CONDITION OF PROPERTY; MAINTENANCE, REPAIRS AND ALTERATIONS

Section 6.01 **Existing Conditions.** Subject to the provisions of this Lease, Tenant accepts the Property in its condition as of the execution of the Lease, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Property or the suitability of the Property for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Property and is not relying on any representations of Landlord or any Broker with respect thereto. If Landlord or Landlord's Broker has provided a Property Information Sheet or other Disclosure Statement regarding the Property, a copy is attached as an exhibit to the Lease.

Section 6.02 **Exemption of Landlord from Liability.** Landlord shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Property, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Property or from other sources or places; or (d) any act or omission of any other tenant of Landlord. Landlord shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Tenant. The provisions of this Section 6.02 shall not, however, exempt Landlord from liability for Landlord's or Landlord's employees', agents' or contractors' active negligence or willful misconduct.

Section 6.03 **Landlord's Obligations.** See Addendum Section 6.03.

Section 6.04 **Tenant's Obligations.**

(a) Except as provided in Section 6.03, Article Seven (Damage or Destruction) and Article Eight (Condemnation), Tenant shall keep all portions of the Property (including structural, nonstructural, interior, exterior, and landscaped areas, portions, systems and equipment) in good order, condition and repair (including interior repainting and refinishing, as needed). If any portion of the Property or any system or equipment in the Property which Tenant is obligated to repair cannot be fully repaired or restored, Tenant shall promptly replace such portion of the Property or system or equipment in the Property, regardless of whether the benefit of such replacement extends beyond the Lease Term; but if the benefit or useful life of such replacement extends beyond the Lease Term (as such term may be extended by exercise of any options), the useful life of such replacement shall be prorated over the remaining portion of the Lease Term (as extended), and Tenant shall be liable only for that portion of the of the cost which is applicable to the Lease Term (as extended). Tenant shall maintain a preventive maintenance contract providing for the regular inspection and maintenance of the heating and air conditioning system by a licensed heating and air conditioning contractor. Subject to the provisions of Section 4.04(d)(iv), if any part of the Property is damaged by any act or omission of Tenant, Tenant shall pay Landlord the cost of repairing or replacing such damaged property, whether or not Landlord would otherwise be obligated to pay the cost of maintaining or repairing such property. It is the intention of Landlord and Tenant that at all times Tenant shall maintain the portions of the Property which Tenant is obligated to maintain in an attractive, first-class and fully operative condition.

(b) Tenant shall fulfill all of Tenant's obligations under this Section 6.04 at Tenant's sole expense. If Tenant fails to maintain, repair or replace the Property as required by this Section 6.04 or is not using all reasonable efforts to do so, Landlord may, upon ten (10) days' prior notice to Tenant (except that no notice shall be required in the case of an emergency), enter the Property and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all costs incurred in performing such maintenance or repair immediately upon demand.

Section 6.05 **Alterations, Additions, and Improvements.**

(a) Tenant shall not make any alterations, additions, or improvements to the Property without Landlord's prior written consent, which shall not be unreasonably withheld except for non-structural alterations which do not exceed Sixty Thousand Dollars ($60,000) in cost per project and which are not visible from the outside of any building of which the Property is part. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph 6.05(a) upon Landlord's written request. All alterations, additions, and improvements shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, which shall not be unreasonably withheld. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

(b) Tenant shall pay when due all claims for labor and material furnished to or for the Tenant Group at the Property. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Property, regardless of whether Landlord's consent to such work is required. Landlord may elect to record and post notices of non-responsibility on the Property.

Section 6.06 **Condition upon Termination.** Upon the termination of the Lease, Tenant shall surrender the Property to Landlord, broom clean and in the same condition as received except for ordinary wear and tear which Tenant was not otherwise obligated to remedy under any provision of this Lease. However, Tenant shall not be obligated to repair any damage which Landlord is required to repair in accordance with this Lease. In addition, Landlord may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent) prior to the expiration of the Lease and to restore the Property to its prior condition, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant's trade fixtures, machinery or equipment which can be removed without material damage to the Property. Tenant shall repair, at Tenant's expense, any damage to the Property caused by the removal of any such trade fixtures, machinery or equipment. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without

Landlord's prior written consent; any power writing or power panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; or other similar building operating equipment and decorations.

See Addendum Section 6.06.

ARTICLE SEVEN. **DAMAGE OR DESTRUCTION**

Section 7.01 **Partial Damage to Property.**

(a) Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Property. If the Property is only partially damaged (i.e., less than fifty percent (50%) of the Property is untenantable as a result of such damage or less than fifty percent (50%) of Tenant's operations are materially impaired) and if the proceeds received by Landlord from the insurance policies described in Paragraph 4.04(b) are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, or improvements.

(b) If (i) Landlord has maintained the insurance required to be maintained under Paragraph 4.04(b) and the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair; (ii) or if the cause of the damage is not covered by such insurance policies; or (iii) the holder of any mortgage on the Property shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, Landlord may elect either to (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate the Lease. If Landlord elects to repair the damage, Tenant shall pay Landlord the "deductible amount" (if any) under Landlord's insurance policies and, if the damage was due to an act or omission of Tenant, or Tenant's employees, agents, contractors or invitees, the difference between the actual cost of repair and any insurance proceeds received by Landlord. If Landlord elects to terminate this Lease, Tenant may elect to continue this Lease in full force and effect, in which case Tenant shall repair any damage to the Property and any building in which the Property is located. Tenant shall pay the cost of such repairs, except that upon satisfactory completion of such repairs, Landlord shall deliver to Tenant any insurance proceeds received by Landlord for the damage repaired by Tenant. Tenant shall give Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice.

(c) If the damage to the Property occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease shall give written notification to the other party of such election within thirty (30) days after Tenant's notice to Landlord of the occurrence of the damage.

Section 7.02 **Substantial or Total Destruction.** If the Property is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Property is greater than partial damage as described in Section 7.01), and regardless of whether Landlord receives any insurance proceeds, this Lease shall terminate the later of the (i) date the destruction occurred and (ii) the date Tenant ceases to do business at the Property. Notwithstanding the preceding sentence, if the Property can be rebuilt within six (6) months after the date of destruction, Landlord may elect to rebuild the Property at Landlord's own expense, in which case this Lease shall remain in full force and effect. Landlord shall notify Tenant of such election within thirty (30) days after Tenant's notice of the occurrence of total or substantial destruction. If Landlord so elects, Landlord shall rebuild the Property at Landlord's sole expense, except that if the destruction was caused by an act or omission of Tenant, Tenant shall pay Landlord the difference between the actual cost of rebuilding and any insurance proceeds received by Landlord.

Section 7.03 **Temporary Reduction of Rent.** If the Property is destroyed or damaged and Landlord or Tenant repairs or restores the Property pursuant to the provisions of this Article Seven, any rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Property is impaired. Except for such possible reduction in Base Rent, insurance premiums and real property taxes, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, repair, or restoration of or to the Property.

Section 7.04 **Waiver.** Tenant waives the protection of any statute, code or judicial decision which grants a tenant the right to terminate a lease in the event of the substantial or total destruction of the leased property. Tenant agrees that the provisions of Section 7.02 above shall govern the rights and obligations of Landlord and Tenant in the event of any substantial or total destruction to the Property.

ARTICLE EIGHT. **CONDEMNATION**

If all or any portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called "Condemnation"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the building in which the Property is located, or which is located on the Property, is taken, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor Tenant terminates this Lease, this Lease shall remain in effect as to the portion of the Property not taken, except that the Base Rent and Additional Rent shall be reduced in proportion to the reduction in the floor area of the Property. Any Condemnation award or payment shall be distributed in the following order: (a) first, to any ground lessor, mortgagee or beneficiary under a deed of trust encumbering the Property, the amount of its interest in the Property; (b) second, to Tenant, only the amount of any award specifically designated for loss of or damage to Tenant's trade fixtures or removable personal property, and (c) third, to Landlord, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. If this Lease is not terminated, Landlord shall repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair at Landlord's expense.

ARTICLE NINE. **ASSIGNMENT AND SUBLETTING**

Section 9.01 **Landlord's Consent Required.** No portion of the Property or of Tenant's interest in this Lease may be acquired by any other person or entity, whether by sale, assignment, mortgage, sublease, transfer, operation of law, or act of Tenant, without Landlord's prior written consent, except as provided in Section 9.02 below. Landlord has the right to grant or withhold its consent as provided in Section 9.05 below. Any attempted transfer without consent shall be void and shall constitute a non-curable breach of this Lease.

Section 9.02 **Tenant Affiliate.** See Addendum Section 9.02.

Section 9.03 **No Release of Tenant.** No transfer permitted by this Article Nine, whether with or without Landlord's consent, shall release Tenant or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article Nine. Consent to one transfer is not a consent to any subsequent transfer. If Tenant's transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to subsequent assignments or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under this Lease.

Section 9.04 **Offer to Terminate.** If Tenant desires to assign the Lease or sublease all of the Property, and if Landlord elects to terminate this Lease pursuant to Section 9.05, the Lease shall terminate as of the

commencement date of a new lease between Landlord and the proposed assignee or subtenant and all the terms and provisions of the Lease governing termination shall apply. If Landlord does not so elect, the Lease shall continue in effect until otherwise terminated and the provisions of Section 9.05 with respect to any proposed transfer shall continue to apply.

Section 9.05 **Landlord's Consent.**

(a) Tenant's request for consent to any transfer described in Section 9.01 shall set forth in writing the details of the proposed transfer, including the name, business and financial condition of the prospective transferee, financial details of the proposed transfer (e.g., the term of and the rent and security deposit payable under any proposed assignment or sublease), and any other information Landlord reasonably deems relevant. Landlord shall have the right to elect to terminate this Lease or to withhold consent, if reasonable, or to grant consent, based on the following factors: (i) the business of the proposed assignee or subtenant and the proposed use of the Property; (ii) the net worth and financial reputation of the proposed assignee or subtenant; and (iii) Tenant's compliance with all of its obligations under the Lease. If Landlord objects to a proposed assignment solely because of the net worth and/or financial reputation of the proposed assignee, Tenant may nonetheless sublease (but not assign), all or a portion of the Property to the proposed transferee, but only on the other terms of the proposed transfer.

(b) If Tenant assigns or subleases, the following shall apply:

(i) If Tenant assigns or subleases more than seventy percent (70%) of the building located on the Property, in the aggregate, then Tenant shall pay to Landlord as Additional Rent under the Lease the Landlord's Share (stated in Section 1.13) of the Profit (defined below) on such transaction as and when received by Tenant, unless Landlord gives written notice to Tenant and the assignee or subtenant that Landlord's Share shall be paid by the assignee or subtenant to Landlord directly. The "Profit" means (A) all amounts paid to Tenant for such assignment or sublease, including "key" money, monthly rent in excess of the monthly rent payable under the Lease, and all fees and other consideration paid for the assignment or sublease, including fees under any collateral agreements, less (B) costs and expenses directly incurred by Tenant in connection with the execution and performance of such assignment or sublease for real estate broker's commissions and costs of renovation or construction of tenant improvements required under such assignment or sublease. Tenant is entitled to recover such costs and expenses before Tenant is obligated to pay the Landlord's Share to Landlord. The Profit in the case of a sublease of less than all the Property is the rent allocable to the subleased space as a percentage on a square footage basis.

(ii) Tenant shall provide Landlord a written statement certifying all amounts to be paid from any assignment or sublease of the Property within thirty (30) days after the transaction documentation is signed, and Landlord may inspect Tenant's relevant books and records to verify the accuracy of such statement. On written request, Tenant shall promptly furnish to Landlord copies of all the transaction documentation, all of which shall be certified by Tenant to be complete, true and correct. Landlord's receipt of Landlord's Share shall not be a consent to any further assignment or subletting. The breach of Tenant's obligation under this Paragraph 9.05(b) shall be a material default of the Lease.

Section 9.06 **No Merger.** No merger shall result from Tenant's sublease of the Property under this Article Nine, Tenant's surrender of this Lease or the termination of this Lease in any other manner. In any such event, Landlord may terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord under any or all subtenancies.

ARTICLE TEN. **DEFAULTS; REMEDIES**

Section 10.01 **Covenants and Conditions.** Tenant's and Landlord's performance of each obligation under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Property is conditioned upon Tenant's performance. Time is of the essence in the performance of all covenants and conditions.

Section 10.02 **Defaults.** Tenant shall be in material default under this Lease:

(a) If Tenant fails to pay rent and abandons the Property or if Tenant's vacation of the Property results in the cancellation of any insurance described in Section 4.04;

(b) If Tenant fails to pay rent when due or any other charge within ten (10) days from receipt of such bill or statement from Landlord;

(c) If Tenant fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more than thirty (30) days are required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) –day period and thereafter diligently pursues its completion. The notice required by this Paragraph is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement.

(d) (i) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as Additional Rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the rent payable by Tenant under this Lease.

(e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

Section 10.03 **Remedies.** On the occurrence of any material default by Tenant, Landlord may, at any time thereafter, following three (3) days written notice or demand (which may be in the form of a three (3) day notice to pay rent or quit and which time may run concurrently therewith) and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

(a) Terminate Tenant's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. If Tenant shall be served with a demand for the payment of past due rent or any other charge, any payments rendered thereafter to cure any default by Tenant shall be made only by cashier's check. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including (i) the worth at the time of the award of the unpaid Base Rent, Additional Rent and other charges which Landlord had earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Landlord would have earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Tenant would have paid for the balance of the Lease term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses Landlord incurs in maintaining or preserving the Property after such default, the cost of recovering possession of the Property, expenses of reletting, including necessary renovation or alteration of the Property, Landlord's reasonable attorneys' fees incurred in connection therewith, and any real estate commission

paid or payable. As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the rate of fifteen percent (15%) per annum, or such lesser amount as may then be the maximum lawful rate. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). If Tenant has abandoned the Property, Landlord shall have the option of (i) retaking possession of the Property and recovering from tenant the amount specified in this Paragraph 10.03(a), and/or (ii) proceeding under Paragraph 10.03(b);

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Property. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due; Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations);

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the property is located.

Section 10.04 **Automatic Termination.** Notwithstanding any other term or provision hereof to the contrary, the Lease shall terminate on the occurrence of any act which affirms the Landlord's intention to terminate the Lease as provided in Section 10.03 hereof, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees that Landlord incurs in connection with the filing, commencement, pursuing and/or defending of any action in any bankruptcy court or other court with respect to the Lease; the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant; or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Base Rent and other rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Section 10.05 **Cumulative Remedies.** Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

Section 10.06 See Addendum.

ARTICLE ELEVEN. **PROTECTION OF LENDERS**

Section 11.01 **Subordination.** Landlord shall have the right to subordinate this Lease to any ground lease, deed of trust or mortgage encumbering the Property, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Tenant shall cooperate with Landlord and any lender which is acquiring a security interest in the Property or the Lease. Tenant shall execute such further documents and assurances as such lender may require in the form attached hereto as Exhibit "B" or such other form as is then required by Landlord's lender, provided that such agreement contains a non-disturbance agreement in favor of Tenant and provided further that Tenant's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Tenant shall not be deprived of its rights under this Lease. Tenant's right to quiet possession of the Property during the Lease Term shall not be disturbed if Tenant pays the rent and performs all of Tenant's obligations under this Lease and is not otherwise in default. If any ground lessor, beneficiary or mortgagee elects to have this Lease prior to the lien of its ground lease, deed of trust or mortgage and gives written notice thereof to Tenant, this Lease shall be deemed prior to such ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof. See Addendum Section 11.01.

Section 11.02 **Attornment.** If Landlord's interest in the Property is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee

of or successor to Landlord's interest in the Property and recognize such transferee or successor as Landlord under this Lease. Tenant waives the protection of any current or future statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Property upon the transfer of Landlord's interest.

Section 11.03 **Signing of Documents.** Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so provided that such agreement include a non-disturbance provision in favor of Tenant. If Tenant fails to do so within fifteen (15) days after written request, Tenant hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of Tenant to execute and deliver any such instrument or document so long as such instrument complies with the provisions of this Article Eleven.

Section 11.04 **Estoppel Certificates**

(a) Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement in the form attached hereto as Exhibit "C" or such other form as is then required by Landlord's lender, certifying: (i) that none of the terms and provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or the Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Tenant shall deliver such statement to Landlord within fifteen (15) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

(b) If Tenant does not deliver such statement to Landlord within such fifteen (15) day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

(c) See Addendum.

Section 11.05 **Tenant's Financial Condition.** Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord Tenant's then existing financial statements to verify the net worth of Tenant or any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Property. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease. See Addendum Section 11.05.

ARTICLE TWELVE. **LEGAL COSTS**

Section 12.01 **Legal Proceedings.** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any costs or expenses that the Nondefaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorney's fees and costs. The losing party in such action shall pay such attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord

harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Property by license of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant Group; (c) otherwise arising out of or resulting from any act or transaction of Tenant Group; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs Landlord reasonably incurs in any such claim or action.

Section 12.02 **Landlord's Consent.** Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under Article Nine (Assignment and Subletting), or in connection with any other act which Tenant proposes to do and which requires Landlord's consent.

ARTICLE THIRTEEN. **MISCELLANEOUS PROVISIONS**

Section 13.01 **Non-Discrimination.** Tenant promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, sex, creed, national origin or ancestry in the leasing, subleasing, transferring, occupancy, tenure or use of the Property or any portion thereof.

Section 13.02 **Landlord's Liability; Certain Duties.**

(a) As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Property or the leasehold estate under a ground lease of the Property at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer provided the transferee assumes all of Landlord's obligations from the date of transfer. However, each Landlord shall deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this Lease.

(b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgage or beneficiary under any deed of trust encumbering the Property whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30) -day period and thereafter diligently pursued to completion.

(c) Notwithstanding any term or provision herein to the contrary, the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Property, and neither the Landlord nor its partners, shareholders, officers or other principals shall have any personal liability under this Lease.

Section 13.03 **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

Section 13.04 **Interpretation.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine,

feminine and neuter genders shall each include the other. In any provisions relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Property with Tenant's expressed or implied permission.

Section 13.05 **Incorporation of Prior Agreements; Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Property and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 13.06 **Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by national overnight carrier or certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered to the address specified in Section 1.03 above. Notices to Landlord shall be delivered to the address specified in Section 1.02 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.07 **Waivers.** All waivers must be in writing and signed by the waiving party. Landlord's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.08 **No Recordation.** Tenant shall not record this Lease without prior written consent from Landlord. However, either Landlord or Tenant may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring such recording shall pay all transfer taxes and recording fees.

Section 13.09 **Binding Effect; Choice of Law.** This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. The laws of the state in which the Property is located shall govern this Lease.

Section 13.10 **Corporate Authority; Partnership Authority.** If Tenant is a corporation, such corporation represents and warrants that each person signing this Lease on behalf of Tenant has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership or certificate of limited partnership.

Section 13.11 **Joint and Several Liability.**

Section 13.12 See Addendum Section 13.12.

Section 13.13 **Execution of Lease.** This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 13.14 **Survival.** All representations and warranties of Landlord and Tenant shall survive the termination of this Lease.

ARTICLE FOURTEEN. **BROKERS**

Section 14.01 **Broker's Fee.** When this Lease is signed by and delivered to both Landlord and Tenant, Landlord shall pay a real estate commission to Landlord's Broker named in Section 1.08 above, if any, as provided in the written agreement between Landlord and Landlord's Broker, or the sum stated in Section 1.09 above for services rendered to Landlord by Landlord's Broker in this transaction. Landlord shall pay Landlord's Broker a commission if Tenant exercises any option to extend the Lease Term or to buy the Property, or any similar option or right which Landlord may grant to Tenant, or if Landlord's Broker is the procuring cause of any other lease or sale entered into between Landlord and Tenant covering the Property. Such commission shall be the amount set forth in Landlord's Broker's commission schedule in effect as of the execution of this Lease. If a Tenant's Broker is named in Section 1.08 above, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if so provided in any agreement between Landlord's Broker and Tenant's Broker. Nothing contained in this Lease shall impose any obligation on Landlord to pay a commission or fee to any party other than Landlord's Broker.

Section 14.02 **Protection of Brokers.** If Landlord sells the Property, or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Property or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article Fourteen. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this provision. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Paragraph is included in this Lease for the benefit of Landlord's Broker.

Section 14.03 **Broker's Disclosure of Agency.** Landlord's Broker hereby discloses to Landlord and Tenant and Landlord and Tenant hereby consent to Landlord's Broker acting in this transaction as the agent of (check one):

☒ Landlord exclusively; or

☐ both Landlord and Tenant.

Section 14.04 **No Other Brokers.** Tenant represents and warrants to Landlord that the brokers named in Section 1.08 above are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease or the Property.

ADDITIONAL PROVISIONS MAY BE SET FORTH IN A RIDER OR RIDERS ATTACHED HERETO OR IN THE BLANK SPACE BELOW. IF NO ADDITIONAL PROVISIONS ARE INSERTED, PLEASE DRAW A LINE THROUGH THE SPACE BELOW.

Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below and have initialed all Riders which are attached to or incorporated by reference in this Lease.

Signed on _____, 19 ____

at _____

"LANDLORD"

MAJESTIC-MAPA PROPERTIES, LLC, a California limited liability company

By: Majestic REALTY CO., a California corporation, its manager

By: /s/ David A. Wheeler

Its: President

By: /s/ Jay H. Bradford

Its: Executive Vice President and Chief Financial Officer

Signed on _____, 19 ____

at _____

"TENANT"

GILEAD SCIENCES, INC., a Delaware corporation

By: /s/ Anthony D. Caracciolo

Its: _____

By: /s/ Mark L. Perry

Its: Executive Vice President, Operations

IN ANY REAL ESTATE TRANSACTION, IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

THIS PRINTED FORM LEASE HAS BEEN DRAFTED BY LEGAL COUNSEL AT THE DIRECTION OF THE SOUTHERN CALIFORNIA CHAPTER OF THE SOCIETY OF INDUSTRIAL AND OFFICER REALTORS,® INC. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE SOUTHERN CALIFORNIA CHAPTER OF THE SOCIETY OF INDUSTRIAL AND OFFICE REALTORS,® INC., ITS LEGAL COUNSEL, THE REAL ESTATE BROKERS NAMED HEREIN, OR THEIR EMPLOYEES OR AGENTS, AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS LEASE OR OF THIS TRANSACTION. LANDLORD AND TENANT SHOULD RETAIN LEGAL COUNSEL TO ADVISE THEM ON SUCH MATTERS AND SHOULD RELY UPON THE ADVICE OF SUCH LEGAL COUNSEL.

Southern California Chapter of the
Society of Industrial and Office Realtors, ® Inc.

INDUSTRIAL REAL ESTATE LEASE
(SINGLE-TENANT FACILITY)

ARTICLE ONE: **BASIC TERMS**

This Article One contains the Basic Terms of this Lease between the Landlord and Tenant named below. Other Articles, Sections and Paragraphs of the Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01. **Date of Lease:** July 20, 2000

Section 1.02. **Landlord (include legal entity):** MAJESTIC-MAPA PROPERTIES, LLC., a California limited liability company and MAJESTIC REALTY CO., a California corporation

Address of Landlord: 13191 Crossroads Parkway North, 6th Floor
City of Industry, CA 91746

Section 1.03. **Tenant (include legal entity):** GILEAD SCIENCES, INC. a Delaware corporation

Address of Tenant: 333 Lakeside Drive
Foster City, California 94404

Section 1.04. **Property (include street address, approximate square footage-and description):** that approximately 53,600 square foot building situated on approximately 2.75 acres of land and more commonly known as 542 West Covina Boulevard, San Dimas, California as outlined in red on Exhibit "A", subject to the non-exclusive use of such area outlined in green.

Section 1.05. **Lease Term:** 5 years — months beginning on * or such other date as is specified in this Lease, and ending on **

Section 1.06. **Permitted Uses:** (See Article Five) Only for general office, laboratory warehousing and manufacturing of pharmaceutical products.

Section 1.07. **Tenant's Guarantor:** (If none, so state) None

Section 1.08. **Brokers:** (See Article Fourteen) (If none, so state)

Landlord's Broker: Majestic Realty Co.
Tenant's Broker: Julien J. Studley, Inc.

Section 1.09. **Commission Payable to Landlord's Broker:** (See Article Fourteen) $ per separate agreement

Section 1.10. **Initial Security Deposit:** (See Section 3.03) $23,584.00

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* the sixty (60) days after the later to occur of: (i) the date the existing tenant vacates the Property and (ii) the date Landlord substantially completes Landlord's Work.

** the fifth (5 th) anniversary of the Lease Commencement Date.

(Single-Tenant Net Form)

Section 1.11. **Vehicle Parking Spaces Allocated to Tenant:** per Exhibit "A"

Section 1.12. **Rent and Other Charges Payable by Tenant:**

(a) **Base Rent:** Twenty-Three Thousand Five Hundred Eighty-Four and no/100 Dollars ($23,584.00) per month for the first twenty-four (24) months, as provided in Section 3.01, and shall be increased on the first day of the – See Addendum Section 1.12 – month(s) after the Commencement Date.

(b) **Other Periodic Payments:** (i) Real Property Taxes (See Section 4.02); (ii) Utilities (See Section 4.03); (iii) Insurance Premiums (See Section 4.04); (iv) Impounds for Insurance Premiums and Property Taxes (See Section 4.07); (v) Maintenance, Repairs and Alterations (See Article Six).

Section 1.13. **Landlord's Share of Profit on Assignment or Sublease:** (See Section 9.05) fifty percent (50%) of the Profit (the "Landlord's Share").

Section 1.14. **Riders:** The following Riders are attached to and made a part of this Lease: (If none, so state) Addendum pages 1 through 10, Option to Extend Term Lease Rider, and Exhibits "A", "B'', "C", "D" and "E"

ARTICLE TWO: **LEASE TERM**

Section 2.01. **Lease of Property For Lease Term.** Landlord leases the Property to Tenant and Tenant leases the Property from Landlord for the Lease Term. The Lease Term is for the period stated in Section 1.05 above and shall begin and end on the dates specified in Section 1.05 above, unless the beginning or end of the Lease Term is changed under any provision of this Lease. The "Commencement Date" shall be the date specified in Section 1.05 above for the beginning of the Lease Term, unless advanced or delayed under any provision of this Lease.

Section 2.02. **Delay in Commencement.** Landlord shall not be liable to Tenant if Landlord does not deliver possession of the Property with Landlord's Work substantially completed to Tenant by April 1, 2001. Landlord's non-delivery of the Property to Tenant on that date shall not affect this Lease or the obligations of Tenant under this Lease except that the Commencement Date shall be delayed until Landlord delivers possession of the Property to Tenant and the Lease Term shall be extended for a period equal to the delay in delivery of possession of the Property with Landlord's Work substantially completed to Tenant, plus the number of days necessary to end the Lease Term on the last day of a month. If Landlord does not deliver possession of the Property with Landlord's Work substantially completed to Tenant within one hundred eighty (180) days, Tenant may elect to cancel this Lease by giving written notice to Landlord within ten (10) days after the one hundred eighty (180)-day period ends. If Tenant gives such notice, the Lease shall be cancelled and neither Landlord nor Tenant shall have any further obligations to the other. If Tenant does not give such notice, Tenant's right to cancel the Lease shall expire and the Lease Term shall commence upon the delivery of possession of the Property with Landlord's Work substantially completed to Tenant. If delivery of possession of the Property to Tenant is delayed, Landlord and Tenant shall, upon such delivery, execute an amendment to this Lease setting forth the actual Commencement Date and expiration date of the Lease. Failure to execute such amendment shall not affect the actual Commencement Date and expiration date of the Lease.

Section 2.03. **Early Occupancy.** If Tenant occupies the Property for the purpose of conducting business therein prior to the Commencement Date, Tenant's occupancy of the Property shall be subject to all of the provisions of this Lease. Early occupancy of the Property shall not advance the expiration date of this Lease. Tenant shall pay Base Rent and all other charges specified in this Lease for such early occupancy period.

Section 2.04. **Holding Over.** Tenant shall vacate the Property upon the expiration or earlier termination of this Lease. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Property. If Tenant does not vacate the Property upon the expiration or earlier termination of the Lease and Landlord thereafter accepts rent from Tenant, Tenant's occupancy

of the Property shall be a "month-to-month" tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the Base Rent then in effect shall be increased by twenty-five percent (25%).

ARTICLE THREE: **BASE RENT**

Section 3.01. **Time and Manner of Payment.** Upon execution of this Lease, Tenant shall pay Landlord the Base Rent in the amount stated in Paragraph 1.12(a) above for the first month of the Lease Term. On the first day of the second month of the Lease Term and each month thereafter, Tenant shall pay Landlord the Base Rent, in advance, without offset, deduction or prior demand. The Base Rent shall be payable at Landlord's address or at such other place as Landlord may designate in writing.

Section 3.02. Intentionally Deleted.

Section 3.03. **Security Deposit; Increases.**

(a) Upon the execution of this Lease, Tenant shall deposit with Landlord a cash Security Deposit in the amount set forth in Section 1.10 above. Landlord may apply all or part of the Security Deposit to any unpaid rent or other charges due from Tenant or to cure any other defaults of Tenant. If Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (10) days after Landlord's written request. Tenant's failure to do so shall be a material default under this Lease. No interest shall be paid on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit.

(b) Each time the Base Rent is increased, Tenant shall deposit additional funds with Landlord sufficient to increase the Security Deposit to an amount which bears the same relationship to the adjusted Base Rent as the initial Security Deposit bore to the initial Base Rent.

Section 3.04. **Termination; Advance Payments.** Upon termination of this Lease under Article Seven (Damage or Destruction), Article Eight (Condemnation) or any other termination not resulting from Tenant's default, and after Tenant has vacated the Property in the manner required by this Lease, Landlord shall refund or credit to Tenant (or Tenant's successor) the unused portion of the Security Deposit, any advance rent or other advance payments made by Tenant to Landlord, and any amounts paid for real property taxes and other reserves which apply to any time periods after termination of the Lease.

ARTICLE FOUR: **OTHER CHARGES PAYABLE BY TENANT**

Section 4.01. **Additional Rent.** All charges payable by Tenant other than Base Rent are called "Additional Rent." Unless this Lease provides otherwise, Tenant shall pay all Additional Rent then due with the next monthly installment of Base Rent. The term "rent" shall mean Base Rent and Additional Rent.

Section 4.02. **Property Taxes.**

(a) **Real Property Taxes.** Tenant shall pay all real property taxes on the Property (including any fees, taxes or assessments against, or as a result of, any tenant improvements installed on the Property by or for the benefit of Tenant) during the Lease Term. Subject to Paragraph 4.02(c) and Section 4.07 below, such payment shall be made at least ten (10) days prior to the delinquency date of the taxes. Within such ten (10) -day period, Tenant shall furnish Landlord with satisfactory evidence that the real property taxes have been paid. Landlord shall reimburse Tenant for any real property taxes paid by Tenant covering any period of time prior to or after the Lease Term. If Tenant fails to pay the real property taxes when due, Landlord may pay the taxes and Tenant shall reimburse Landlord for the amount of such tax payment as Additional Rent. Alternatively, Landlord may elect to bill Tenant in advance for such taxes and Tenant shall pay Landlord the amount of such taxes, as Additional Rent, at least ten (10) days prior to delinquency. Landlord shall pay such taxes prior to delinquency provided Tenant has timely made such payments to Landlord. Any penalty caused by Tenant's failure to timely make such payments shall also be Additional Rent owed by Tenant immediately upon demand.

(b) **Definition of "Real Property Tax.** " "Real property tax" means: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Property; (ii) any tax on the Landlord's right to receive, or the receipt of, rent or income from the Property or against Landlord's business of leasing the Property; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Property by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Property due to a change of ownership, as defined by applicable law, or other transfer of all or part of Landlord's interest in the Property; and (v) any charge or fee replacing any tax previously included within the definition of real property tax. "Real property tax" does not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes.

(c) **Joint Assessment.** If the Property is not separately assessed, Landlord shall reasonably determine Tenant's share of the real property tax payable by Tenant under Paragraph 4.02(a) from the assessor's worksheets or other reasonably available information. Tenant shall pay such share to Landlord within fifteen (15) days after receipt of Landlord's written statement.

(d) **Personal Property Taxes.**

(i) Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall try to have personal property taxed separately from the Property.

(ii) If any of Tenant's personal property is taxed with the Property, Tenant shall pay Landlord the taxes for the personal property within fifteen (15) days after Tenant receives a written statement from Landlord for such personal property taxes.

(e) **Tenant's Right to Contest Taxes.** Tenant may attempt to have the assessed valuation of the Property reduced or may initiate proceedings to contest the real property taxes. If required by law, Landlord shall join in the proceedings brought by Tenant. However, Tenant shall pay all costs of the proceedings, including any costs or fees incurred by Landlord. Upon the final determination of any proceeding or contest, Tenant shall immediately pay the real property taxes due, together with all costs, charges, interest and penalties incidental to the proceedings. If Tenant does not pay the real property taxes when due and contests such taxes, Tenant shall not be in default under this Lease for nonpayment of such taxes if Tenant deposits funds with Landlord or opens an interest-bearing account reasonably acceptable to Landlord in the joint names of Landlord and Tenant. The amount of such deposit shall be sufficient to pay the real property taxes plus a reasonable estimate of the interest, costs, charges and penalties which may accrue if Tenant's action is unsuccessful, less any applicable tax impounds previously paid by Tenant to Landlord. The deposit shall be applied to the real property taxes due, as determined at such proceedings. The real property taxes shall be paid under protest from such deposit if such payment under protest is necessary to prevent the Property from being sold under a "tax sale" or similar, enforcement proceeding.

Section 4.03. **Utilities.** Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Property. However, if any services or utilities are jointly metered with other property, Landlord shall make a reasonable determination of Tenant's proportionate share of the cost of such utilities and services and Tenant shall pay such share to Landlord within fifteen (15) days after receipt of Landlord's written statement.

Section 4.04. **Insurance Policies.**

(a) **Liability Insurance.** During the Lease Term, Tenant shall maintain a policy of commercial general liability insurance (sometimes known as broad form comprehensive general liability insurance) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Property. Tenant shall name Landlord as an additional insured under such policy. The initial amount of such insurance shall be Three Million Dollars ($3,000,000.00) per occurrence and shall be subject to periodic increase based upon industry standards for similar facilities. The liability insurance obtained by Tenant under this Paragraph 4.04(a) shall (i) be primary and non-contributing; (ii) contain

cross-liability endorsements; and (iii) insure Landlord against Tenant's performance under Section 5.05, if the matters giving rise to the indemnity under Section 5.05 result from the negligence of Tenant. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease. Landlord may also obtain comprehensive public liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Property. The policy obtained by Landlord shall not be contributory and shall not provide primary insurance.

(b) **Property and Rental Income Insurance.** During the Lease Term, Landlord shall maintain policies of insurance covering loss of or damage to the Property in the full amount of its replacement value. Such policy shall contain an Inflation Guard Endorsement and shall provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk), sprinkler leakage and any other perils which Landlord deems reasonably necessary. Landlord shall have the right to obtain flood and earthquake insurance if required by any lender holding a security interest in the Property. Landlord shall not obtain insurance for Tenant's fixtures or equipment or building improvements installed by Tenant on the Property. During the Lease Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year's Base Rent, plus estimated real property taxes and insurance premiums. Tenant shall be liable for the payment of any deductible amount under Landlord's or Tenant's insurance policies maintained pursuant to this Section 4.04; provided, however, Landlord's insurance deductible shall not exceed Ten Thousand Dollars ($10,000). Tenant shall not do or permit anything to be done which invalidates any such insurance policies. Upon Tenant's request, Landlord shall provide Tenant a certificate evidencing such insurance.

(c) **Payment of Premiums.** Subject to Section 4.07, Tenant shall pay all premiums for the insurance policies described in Paragraphs 4.04(a) and (b) (whether obtained by Landlord or Tenant) within fifteen (15) days after Tenant's receipt of a copy of the premium statement or other evidence of the amount due, except Landlord shall pay all premiums for non-primary comprehensive public liability insurance which Landlord elects to obtain as provided in Paragraph 4.04(a). If insurance policies maintained by Landlord cover improvements on real property other than the Property, Landlord shall deliver to Tenant a statement of the premium applicable to the Property showing in reasonable detail how Tenant's share of the premium was computed. If the Lease Term expires before the expiration of an insurance policy maintained by Landlord, Tenant shall be liable for Tenant's prorated share of the insurance premiums. Before the Commencement Date, Tenant shall deliver to Landlord a copy of any policy of insurance which Tenant is required to maintain under this Section 4.04. At least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord a renewal of such policy. As an alternative to providing a policy of insurance, Tenant shall have the right to provide Landlord a certificate of insurance, executed by an authorized officer of the insurance company, showing that the insurance which Tenant is required to maintain under this Section 4.04 is in full force and effect and containing such other information which Landlord reasonably requires.

(d) **General Insurance Provisions.**

(i) Any insurance which Tenant is required to maintain under this Lease shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(ii) If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is cancelled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance, in which case Tenant shall reimburse Landlord for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance.

(iii) Landlord and Tenant shall maintain all insurance required under this Lease with companies holding a "General Policy Rating" of A-12 or better, as set forth in the most current issue of "Best Key Rating Guide". Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 4.04 may not be available in the future. Tenant acknowledges that the insurance described in this Section 4.04 is for the primary benefit of Landlord. If at any time during the Lease

Term, Tenant or Landlord is unable to maintain the insurance required under the Lease, Landlord and Tenant shall nevertheless maintain insurance coverage which is customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. Therefore, Tenant shall obtain any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

(iv) Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation. Landlord's and Tenant's insurance policies described in this Section shall contain a provision waiving the carrier's right to subrogation.

Section 4.05. **Late Charges.** Tenant's failure to pay rent promptly may cause Landlord to incur unanticipated costs. The exact amount of such costs are impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by any ground lease, mortgage or trust deed encumbering the Property. Therefore, if Landlord does not receive any rent payment within ten (10) days after it becomes due, provided Landlord has given Tenant forty-eight (48) hours written notice and Tenant has still failed to pay such Base Rent (which forty-eight (48) hours shall run concurrently with such ten (10) day period), Tenant shall pay Landlord a late charge equal to ten percent (10%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment.

Section 4.06. **Interest on Past Due Obligations.** Any amount owed by one party hereunder to the other which is not paid when due shall bear interest at the rate of fifteen percent (15%) per annum from the due date of such amount. However, interest shall not be payable on late charges to be paid by Tenant under this Lease. The payment of interest on such amounts shall not excuse or cure any default under this Lease. If the interest rate specified in this Lease is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

Section 4.07. **Impounds for Insurance Premiums and Real Property Taxes.** If Tenant is more than ten (10) days late in the payment of Base Rent more than twice in any consecutive twelve (12) -month period, Tenant shall pay Landlord a sum equal to one-twelfth (1/12) of the annual real property taxes and insurance premiums payable by Tenant under this Lease, together with each payment of Base Rent. Landlord shall hold such payments in a non-interest bearing impound account. If unknown, Landlord shall reasonably estimate the amount of real property taxes and insurance premiums when due. Tenant shall pay any deficiency of funds in the impound account to Landlord upon written request. If Tenant, defaults under this Lease, Landlord may apply any funds in the impound account to any obligation then due under this Lease.

ARTICLE FIVE: **USE OF PROPERTY**

Section 5.01. **Permitted Uses.** Tenant may use the Property only for the Permitted Uses set forth in Section 1.06 above.

Section 5.02. **Manner of Use.** Tenant shall not cause or permit the Property to be used in any way which constitutes a violation of any law, ordinance, or governmental regulation or order, which annoys or interferes with the rights of other tenants of Landlord, or which constitutes a nuisance or waste. Tenant shall obtain and pay for all permits, including a Certificate of Occupancy, required for Tenant's occupancy of the Property and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Property, including the Occupational Safety and Health Act.

See Addendum Section 5.02

Section 5.03. Intentionally Deleted.

See Addendum Section 5.03

Section 5.04. **Signs and Auctions.** Tenant shall not place any signs on the Property without Landlord's prior written consent. Tenant shall not conduct or permit any auctions or sheriff's sales at the Property.

See Addendum Section 5.04

Section 5.05. **Indemnity.** Tenant shall indemnify Landlord against and hold Landlord harmless from any and all costs, claims or liability arising from: (a) Tenant's use of the Property; (b) the conduct of Tenant's business or anything else done or permitted by Tenant to be done in or about the Property, (c) any breach or default in the performance of Tenant's obligations under this Lease; (d) any misrepresentation or breach of warranty by Tenant under this Lease; or (e) other acts or omissions of Tenant. Tenant shall defend Landlord against any such cost, claim or liability at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs incurred by Landlord in connection with any such claim. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except for any claim arising out of Landlord's or Landlord's employees', agents' or contractors' active negligence or willful misconduct. As used in this Section, the term "Tenant" shall include Tenant's employees, agents, contractors and invitees, if applicable.

See Addendum Section 5.05.

Section 5.06. **Landlord's Access.** Landlord or its agents may enter the Property at all reasonable times to show the Property to potential buyers, investors or tenants or other parties; to do any other act or to inspect and conduct tests in order to monitor Tenant's compliance with all applicable environmental laws and all laws governing the presence and use of Hazardous Material; or for any other purpose Landlord deems necessary. Landlord shall give Tenant 24-hour prior notice of such entry, except in the case of an emergency and Landlord agrees to allow a representative of Tenant to accompany Landlord and further agrees to comply with Tenant's reasonable security measures. Landlord may place customary "For Sale" or "For Lease" signs on the Property.

Section 5.07. **Quiet Possession.** If Tenant pays the rent and complies with all other terms of this Lease, Tenant may occupy and .enjoy the Property for the full Lease Term, subject to the provisions of this Lease.

ARTICLE SIX: **CONDITION OF PROPERTY; MAINTENANCE, REPAIRS AND ALTERATIONS**

Section 6.01. **Existing Conditions.** Subject to the provisions of this Lease, Tenant accepts the Property in its condition as of the execution of the Lease, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. Except as provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation as to the condition of the Property or the suitability of the Property for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of and inquiry regarding the condition of the Property and is not relying on any representations of Landlord or any Broker with respect thereto. If Landlord or Landlord's Broker has provided a Property Information Sheet or other Disclosure Statement regarding the Property, a copy is attached as an exhibit to the Lease.

Section 6.02. **Exemption of Landlord from Liability.** Landlord shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Property, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Property or from other sources or places; or (d) any act or omission of any other tenant of Landlord. Landlord shall not be liable for any such damage or injury even though

the cause of or the means of repairing such damage or injury are not accessible to Tenant. The provisions of this Section 6.02 shall not, however, exempt Landlord from liability for Landlord's or Landlord's employees', agents' or contractors' active negligence or willful misconduct.

Section 6.03. **Landlord's Obligations.**

See Addendum Section 6.03.

Section 6.04. **Tenant's Obligations.**

(a) Except as provided in Section 6.03, Article Seven (Damage or Destruction) and Article Eight (Condemnation), Tenant shall keep all portions of the Property (including structural, nonstructural, interior, exterior, and landscaped areas, portions, systems and equipment) in good order, condition and repair (including interior repainting and refinishing, as needed). If any portion of the Property or any system or equipment in the Property which Tenant is obligated to repair cannot be fully repaired or restored, Tenant shall promptly replace such portion of the Property or system or equipment in the Property, regardless of whether the benefit of such replacement extends beyond the Lease Term; but if the benefit or useful life of such replacement extends beyond the Lease Term (as such term may be extended by exercise of any options), the useful life of such replacement shall be prorated over the remaining portion of the Lease Term (as extended), and Tenant shall be liable only for that portion of the cost which is applicable to the Lease Term (as extended). Tenant shall maintain a preventive maintenance contract providing for the regular inspection and maintenance of the heating and air conditioning system by a licensed heating and air conditioning contractor. Subject to the provisions of Section 4.04(d)(iv), if any part of the Property is damaged by any act or omission of Tenant, Tenant shall pay Landlord the cost of repairing or replacing such damaged property, whether or not Landlord would otherwise be obligated to pay the cost of maintaining or repairing such property. It is the intention of Landlord and Tenant that at all times Tenant shall maintain the portions of the Property which Tenant is obligated to maintain in an attractive, first-class and fully operative condition.

(b) Tenant shall fulfill all of Tenant's obligations under this Section 6.04 at Tenant's sole expense. If Tenant fails to maintain, repair or replace the Property as required by this Section 6.04 or is not using all reasonable efforts to do so, Landlord may, upon ten (10) days' prior notice to Tenant (except that no notice shall be required in the case of an emergency), enter the Property and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all costs incurred in performing such maintenance or repair immediately upon demand.

Section 6.05. **Alterations, Additions, and Improvements.**

(a) Tenant shall not make any alterations, additions, or improvements to the Property without Landlord's prior written consent, which shall not be unreasonably withheld, except for non-structural alterations which do not exceed Forty Thousand Dollars ($40,000.00) in cost per project and which are not visible from the outside of any building of which the Property is part. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph 6.05(a) upon Landlord's written request. All alterations, additions, and improvements shall be done in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, which shall not be unreasonably withheld. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

(b) Tenant shall pay when due all claims for labor and material furnished to or for the Tenant Group at the Property. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Property, regardless of whether Landlord's consent to such work is required. Landlord may elect to record and post notices of non-responsibility on the Property.

Section 6.06. **Condition upon Termination.** Upon the termination of the Lease, Tenant shall surrender the Property to Landlord, broom clean and in the same condition as received except for ordinary wear and

tear which Tenant was not otherwise obligated to remedy under any provision of this Lease. However, Tenant shall not be obligated to repair any damage which Landlord is required to repair in accordance with this Lease. In addition, Landlord may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent) prior to the expiration of the Lease and to restore the Property to its prior condition, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of the Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Property. Tenant shall repair, at Tenant's expense, any damage to the Property caused by the removal of any such machinery or equipment. In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: any power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; heaters, air conditioners or any other heating or air conditioning equipment; fencing or security gates; or other similar building operating equipment and decorations.

See Addendum Section 6.06

ARTICLE SEVEN: **DAMAGE OR DESTRUCTION**

Section 7.01. **Partial Damage to Property** .

(a) Tenant shall notify Landlord in writing immediately upon the occurrence of any damage to the Property. If the Property is only partially damaged (i.e., less than fifty percent (50%) of the Property is untenantable as a result of such damage or less than fifty percent (50%) of Tenant's operations are materially impaired) and if the proceeds received by Landlord from the insurance policies described in Paragraph 4.04(b) are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, or improvements.

(b) If (i) Landlord has maintained the insurance required to be maintained under Paragraph 4.04(b) and the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair; (ii) the cause of the damage is not covered by such insurance policies; or (iii) the holder of any mortgage on the Property shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, Landlord may elect either to (i) repair damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect, or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of notice of the occurrence of the damage whether Landlord elects to repair the damage or terminate the Lease. If Landlord elects to repair the damage, Tenant shall pay Landlord the "deductible amount" (if any) under Landlord's insurance policies and, if the damage was due to an act or omission of Tenant, or Tenant's employees, agents, contractors or invitees, the difference between the actual cost of repair and any insurance proceeds received by Landlord. If Landlord elects to terminate this Lease, Tenant may elect to continue this Lease in full force and effect, in which case Tenant shall repair any damage to the Property and any building in which the Property is located. Tenant shall pay the cost of such repairs, except that upon satisfactory completion of such repairs, Landlord shall deliver to Tenant any insurance proceeds received by Landlord for the damage repaired by Tenant. Tenant shall give Landlord written notice of such election within ten (10) days after receiving Landlord's termination notice.

(c) If the damage to the Property occurs during the last six (6) months of the Lease Term and such damage will require more than thirty (30) days to repair, either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease shall give written notification to the other party of such election within thirty (30) days after Tenant's notice to Landlord of the occurrence of the damage.

Section 7.02. **Substantial or Total Destruction.** If the Property is substantially or totally destroyed by any cause whatsoever (i.e., the damage to the Property is greater than partial damage as described in Section 7.01), and regardless of whether Landlord receives any insurance proceeds, this Lease shall terminate the later of (i) the

date the destruction occurred or (ii) the date Tenant ceases to do business at the Property. Notwithstanding the preceding sentence, if the Property can be rebuilt within six (6) months after the date of destruction, Landlord may elect to rebuild the Property at Landlord's own expense, in which case this Lease shall remain in full force and effect. Landlord shall notify Tenant of such election within thirty (30) days after Tenant's notice of the occurrence of total or substantial destruction. If Landlord so elects, Landlord shall rebuild the Property at Landlord's sole expense, except that if the destruction was caused by an act or omission of Tenant, Tenant shall pay Landlord the difference between the actual cost of rebuilding and any insurance proceeds received by Landlord.

Section 7.03. **Temporary Reduction of Rent.** If the Property is destroyed or damaged and Landlord or Tenant repairs or restores the Property pursuant to the provisions of this Article Seven, any rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Property is impaired. Except for such possible reduction in Base Rent, insurance premiums and real property taxes, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Property.

Section 7.04. **Waiver.** Tenant waives the protection of any statute, code or judicial decision which grants a tenant the right to terminate a lease in the event of the substantial or total destruction of the leased property. Tenant agrees that the provisions of Section 7.02 above shall govern the rights and obligations of Landlord and Tenant in the event of any substantial or total destruction to the Property.

ARTICLE EIGHT: **CONDEMNATION**

If all or any portion of the Property is taken under the power of eminent domain or sold under the threat of that power (all of which are called "Condemnation"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the building in which the Property is located, or which is located on the Property, is taken, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor Tenant terminates this Lease, this Lease shall remain in effect as to the portion of the Property not taken, except that the Base Rent and Additional Rent shall be reduced in proportion to the reduction in the floor area of the Property. Any Condemnation award or payment shall be distributed in the following order: (a) first, to any ground lessor, mortgagee or beneficiary under a deed of trust encumbering the Property; the amount of its interest in the Property; (b) second, to Tenant, only the amount of any award specifically designated for loss of or damage to Tenant's trade fixtures or removable persona] property; and (c) third, to Landlord, the remainder of such award, whether as compensation for reduction in the value of the leasehold, the taking of the fee, or otherwise. If this Lease is not terminated, Landlord shall repair any damage to the Property caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair at Landlord's expense.

ARTICLE NINE: **ASSIGNMENT AND) SUBLETTING**

Section 9.01. **Landlord's Consent Required.** No portion of the Property or of Tenant's interest in this Lease may be acquired by any other person or entity, whether by sale, assignment, mortgage, sublease, transfer, operation of law, or act of Tenant, without Landlord's prior written consent, except as provided in Section 9.02 below. Landlord has the right to grant or withhold its consent as provided in Section 9.05 below. Any attempted transfer without consent shall be void and shall constitute a non-curable breach of this Lease.

Section 9.02. **Tenant Affiliate.**

See Addendum Section 9.02.

Section 9.03. **No Release of Tenant.** No transfer permitted by this Article Nine, whether with or without Landlord's consent, shall release Tenant or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article Nine. Consent to one transfer is not a consent to any subsequent transfer. If Tenant's transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to subsequent assignments or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent. Such action shall not relieve Tenant's liability under this Lease.

Section 9.04. **Offer to Terminate.** If Tenant desires to assign the Lease or sublease all of the Property, and if Landlord elects in writing to terminate this Lease pursuant to Section 9.5, the Lease shall terminate as of the commencement date of a new lease between Landlord and the proposed assignee or subtenant and all the terms and provisions of the Lease governing termination shall apply. If Landlord does not so elect, the Lease shall continue in effect until otherwise terminated and the provisions of Section 9.05 with respect to any proposed transfer shall continue to apply.

Section 9.05. **Landlord's Consent.**

(a) Tenant's request for consent to any transfer described in Section 9.01 shall set forth in writing the details of the proposed transfer, including the name, business and financial condition of the prospective transferee, financial details of the proposed transfer (e.g., the term of and the rent and security deposit payable under any proposed assignment or sublease), and any other information Landlord reasonably deems relevant. Landlord shall have the right to elect to terminate this Lease, or to withhold consent, if reasonable, or to grant consent, based on the following factors: (i) the business of the proposed assignee or subtenant and the proposed use of the Property; (ii) the net worth and financial reputation of the proposed assignee or subtenant; and (iii) Tenant's compliance with all of its obligations under the Lease. If Landlord objects to a proposed assignment solely because of the net worth and/or financial reputation of the proposed assignee, Tenant may nonetheless sublease (but not assign), all or a portion of the Property to the proposed transferee, but only on the other terms of the proposed transfer.

(b) If Tenant assigns or subleases, the following shall apply:

(i) If Tenant assigns or subleases more than 37,000 square feet of the Property in the aggregate, then Tenant shall pay to Landlord as Additional Rent under the Lease the Landlord's Share (stated in Section 1.13) of the Profit (defined below) on such transaction as and when received by Tenant, unless Landlord gives written notice to Tenant and the assignee or subtenant that Landlord's Share shall be paid by the assignee or subtenant to Landlord directly. The "Profit" means (A) all amounts paid to Tenant for such assignment or sublease, including "key" money, monthly rent in excess of the monthly rent payable under the Lease, and all fees and other consideration paid for the assignment or sublease, including fees under any collateral agreements, less (B) costs and expenses directly incurred by Tenant in connection with the execution and performance of such assignment or sublease for real estate broker's commissions and costs of renovation or construction of tenant improvement required under such assignment or sublease. Tenant is entitled to recover such costs and expenses before Tenant is obligated to pay the Landlord's Share to Landlord. The Profit in the case of a sublease of less than all the Property is the rent allocable to the subleased space as a percentage on a square footage basis.

(ii) Tenant shall provide Landlord a written statement certifying all amounts to be paid from any assignment or sublease of the Property within thirty (30) days after the transaction documentation is signed, and Landlord may inspect Tenant's relevant books and records to verify the accuracy of such statement. On written request, Tenant shall promptly furnish to Landlord copies of all the transaction documentation, all of which shall be certified by Tenant to be complete, true and correct. Landlord's receipt of Landlord's Share shall not be a consent to any further assignment or subletting. The breach of Tenant's obligation under this Paragraph 9.05(b) shall be a material default of the Lease.

Section 9.06. **No Merger.** No merger shall result from Tenant's sublease of the Property under this Article Nine, Tenant's surrender of this Lease or the termination of this Lease in any other manner. In any such

event, Landlord may terminate any or all subtenancies or succeed to the interest of Tenant as sublandlord under any or all subtenancies.

ARTICLE TEN: **DEFAULTS; REMEDIES**

Section 10.01. **Covenants and Conditions.** Tenant's performance of each obligation under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Property is conditioned upon Tenant's performance. Time is of the essence in the performance of all covenants and conditions.

Section 10.02. **Defaults.** Tenant shall be in material default under this Lease:

(a) If Tenant fails to pay rent and abandons the Property or if Tenant's vacation of the Property results in the cancellation of any insurance described in Section 4.04;

(b) If Tenant fails to pay rent when due or any other charge within ten (10) days from receipt of such bill or statement from Landlord;

(c) If Tenant fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more than thirty (30) days are required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) -day period and thereafter diligently pursues its completion. The notice required by this Paragraph is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement.

(d) (i) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines' that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as Additional Rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the rent payable by Tenant under this Lease.

(e) If any guarantor of the Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under the Lease. Unless otherwise expressly provided, no guaranty of the Lease is revocable.

Section 10.03. **Remedies.** On the occurrence of any material default by Tenant, Landlord may, at any time thereafter, following three (3) days written notice or demand (which may be in the form of a three (3) day notice to pay rent or quit and which time may run concurrently therewith) and without limiting Landlord in the exercise of any right or remedy which Landlord may have:

(a) Terminate Tenant's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. If Tenant shall be served with a demand for the payment of past due rent or any other charge, any payments rendered thereafter to cure any default by Tenant shall be made only by cashier's check. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including (i) the worth at the time of the award of the unpaid Base Rent, Additional Rent and other charges which Landlord had earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Landlord would have earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; (iii) the

worth at the time of the award of the amount by which the unpaid Base Rent, Additional Rent and other charges which Tenant would have paid for the balance of the Lease term after the time of award exceeds the amount of such rental loss that Tenant proves Landlord could have reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses Landlord incurs in maintaining or preserving the Property after such default, the cost of recovering possession of the Property, expenses of reletting, including necessary renovation or alteration of the Property, Landlord's reasonable attorneys' fees incurred in connection therewith, and any real estate commission paid or payable. As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the rate of fifteen percent (15%) per annum, or such lesser amount as may then be the maximum lawful rate. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). If Tenant has abandoned the Property, Landlord shall have the option of (i) retaking possession of the Property and recovering from Tenant the amount specified in this Paragraph 10.03(a); and/or (ii) proceeding under Paragraph 10.03(b).

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant has abandoned the Property. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due; Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign subject only to reasonable limitations);

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Property is located.

Section 10.04. Intentionally Deleted.

Section 10.05. **Automatic Termination.** Notwithstanding any other term or provision hereof to the contrary, the Lease shall terminate on the occurrence of any act which affirms the Landlord's intention to terminate the Lease as provided in Section 10.03 hereof, including the filing of an unlawful detainer action against Tenant. On such termination, Landlord's damages for default shall include all costs and fees, including reasonable attorneys' fees that Landlord incurs in connection with the filing, commencement, pursuing and/or defending of any action in any bankruptcy court or other court with respect to the Lease; the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant; or the pursuing of any action with respect to Landlord's right to possession of the Property. All such damages suffered (apart from Base Rent and other rent payable hereunder) shall constitute pecuniary damages which must be reimbursed to Landlord prior to assumption of the Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Section 10.06. **Cumulative Remedies.** Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy.

Section 10.07. See Addendum

ARTICLE ELEVEN: **PROTECTION OF LENDERS**

Section 11.01. **Subordination.** Landlord shall have the right to subordinate this Lease to any ground lease, deed of trust or mortgage encumbering the Property, any advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Tenant shall cooperate with Landlord and any lender which is acquiring a security interest in the Property or the Lease. Tenant shall execute such further document and assurances as such lender may require in the form attached hereto as Exhibit "B" or such other form as is then required by Landlord's lender, provided that such agreement contains a non-disturbance agreement in favor of Tenant and provided further that Tenant's obligations under this Lease shall not be increased in any material way (the performance of ministerial acts shall not be deemed material), and Tenant

shall not be deprived of its rights under this Lease. Tenant's right to quiet possession of the Property during the Lease Term shall not be distributed if Tenant pays the rent and performs all of Tenant's obligations under this Lease and is not otherwise in default. If any ground lessor, beneficiary or mortgagee elects to have this Lease prior to the lien of its ground lease, deed of trust or mortgage and gives written notice thereof to Tenant, this Lease shall be deemed prior to such ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of said ground lease, deed of trust or mortgage or the date of recording thereof.

See Addendum Section 11.01

Section 11.02. **Attornment.** If Landlord's interest in the Property is acquired by any ground lessor, beneficiary under a deed of trust, mortgagee, or purchaser at a foreclosure sale, Tenant shall attorn to the transferee of or successor to Landlord's interest in the Property and recognize such transferee or successor as Landlord under this Lease. Tenant waives the protection of any current or future statute or rule of law which gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Property upon the transfer of Landlord's interest.

Section 11.03. **Signing of Documents.** Tenant shall sign and deliver any instrument or documents necessary or appropriate to evidence any such attornment or subordination or agreement to do so, provided that such agreement includes a non-disturbance provision in favor of Tenant. If Tenant fails to do so within fifteen (15) days after written request, Tenant hereby makes, constitutes and irrevocably appoints Landlord, or any transferee or successor of Landlord, the attorney-in-fact of Tenant to execute and deliver any such instrument or document so long as such instrument complies with the provisions of this Article Eleven.

Section 11.04. **Estoppel Certificates.**

(a) Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement in the form attached hereto as Exhibit "C" or such other form as is then required by Landlord's lender, certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or the Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Tenant shall deliver such statement to Landlord within fifteen (15) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

(b) If Tenant does not deliver such statement to Landlord within such fifteen (15) -day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

Section 11.05. **Tenant's Financial Condition.** Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord Tenant's then existing financial statements to verify the net worth of Tenant or any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any lender designated by Landlord any financial statements required by such lender to facilitate the financing or refinancing of the Property. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth in this Lease.

ARTICLE TWELVE: **LEGAL COSTS**

Section 12.01. **Legal Proceedings.** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any costs or expenses that the Nondefaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Property by license of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant Group; (c) otherwise arising out of or resulting from any act or transaction of Tenant Group; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs Landlord reasonably incurs in any such claim or action.

Section 12.02. **Landlord's Consent.** Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under Article Nine (Assignment and Subletting), or in connection with any other act which Tenant proposes to do and which requires Landlord's consent.

ARTICLE THIRTEEN: **MISCELLANEOUS PROVISIONS**

Section 13.01. **Non-Discrimination.** Tenant promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, sex, creed, national origin or ancestry in the leasing, subleasing, transferring, occupancy, tenure or use of the Property or any portion thereof.

Section 13.02. **Landlord's Liability; Certain Duties.**

(a) As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Property or the leasehold estate under a ground lease of the Property at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer, provided the transferee assumes all of Landlord's obligations from the date of transfer. However, each Landlord shall deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this Lease.

(b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Property whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30) -day period and thereafter diligently pursued to completion.

(c) Notwithstanding any term or provision herein to the contrary, the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Property, and neither the Landlord nor its partners, shareholders, officers or other principals shall have any personal liability under this Lease.

Section 13.03. **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

Section 13.04. **Interpretation.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Property with Tenant's expressed or implied permission.

Section 13.05. **Incorporation of Prior Agreements; Modifications.** This Lease is the only agreement between the parties pertaining to the lease of the Property and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void.

Section 13.06. **Notices.** All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by national overnight carrier or certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered to the address specified in Section 1.03 above. Notices to Landlord shall be delivered to the address specified in Section 1.02 above. All notices shall be effective upon delivery. Either party may change its notice address upon written notice to the other party.

Section 13.07. **Waivers.** All waivers must be in writing and signed by the waiving party. Landlord's failure to enforce any provision of this Lease or its acceptance of rent shall not be a waiver and shall not prevent Landlord from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

Section 13.08. **No Recordation.** Tenant shall not record this Lease without prior written consent from Landlord. However, either Landlord or Tenant may require that a "Short Form" memorandum of this Lease executed by both parties be recorded. The party requiring such recording shall pay all transfer taxes and recording fees.

Section 13.09. **Binding Effect; Choice of Law.** This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. The laws of the state in which the Property is located shall govern this Lease.

Section 13.10. **Corporate Authority; Partnership Authority.** If Tenant is a corporation, such corporation represents and warrants that each person signing this Lease on behalf of Tenant has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership or certificate of limited partnership.

Section 13.11. **Joint and Several Liability.**

Section 13.12. See Addendum Section 13.12

Section 13.13. **Execution of Lease.** This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Landlord's delivery of this Lease to Tenant shall not be deemed to be an offer to lease and shall not be binding upon either party until executed and delivered by both parties.

Section 13.14. **Survival.** All representations and warranties of Landlord and Tenant shall survive the termination of this Lease.

ARTICLE FOURTEEN: **BROKERS**

Section 14.01. **Broker's Fee.** When this Lease is signed by and delivered to both Landlord and Tenant, Landlord shall pay a real estate commission to Landlord's Broker named in Section 1.08 above, if any, as provided in the written agreement between Landlord and Landlord's Broker, or the sum stated in Section 1.09 above for services rendered to Landlord by Landlord's Broker in this transaction. Landlord shall pay Landlord's Broker a commission if Tenant exercises any option to extend the Lease Term or to buy the Property, or any similar option or right which Landlord may grant to Tenant, or if Landlord's Broker is the procuring cause of any other lease or sale entered into between Landlord and Tenant covering the Property. Such commission shall be the amount set forth in Landlord's Broker's commission schedule in effect as of the execution of this Lease. If a Tenant's Broker is named in Section 1.08 above, Landlord's Broker shall pay an appropriate portion of its commission to Tenant's Broker if so provided in any agreement between Landlord's Broker and Tenant's Broker. Nothing contained in this Lease shall impose any obligation on Landlord to pay a commission or fee to any party other than Landlord's Broker.

Section 14.02. **Protection of Brokers.** If Landlord sells the Property, or assigns Landlord's interest in this Lease, the buyer or assignee shall, by accepting such conveyance of the Property or assignment of the Lease, be conclusively deemed to have agreed to make all payments to Landlord's Broker thereafter required of Landlord under this Article Fourteen. Landlord's Broker shall have the right to bring a legal action to enforce or declare rights under this provision. The prevailing party in such action shall be entitled to reasonable attorneys' fees to be paid by the losing party. Such attorneys' fees shall be fixed by the court in such action. This Paragraph is included in this Lease for the benefit of Landlord's Broker.

Section 14.03. **Broker's Disclosure of Agency.** Landlord's Broker hereby discloses to Landlord and Tenant and Landlord and Tenant hereby consent to Landlord's Broker acting in this transaction as the agent of (check one):

☒ Landlord exclusively; or
☐ both Landlord and Tenant.

Section 14.04. **No Other Brokers.** Tenant represents and warrants to Landlord that the brokers named in Section 1.08 above are the only agents, brokers, finders or other parties with whom Tenant has dealt who are or may be entitled to any commission or fee with respect to this Lease or the Property.

ADDITIONAL PROVISIONS MAY BE SET FORTH IN A RIDER OR RIDERS ATTACHED HERETO OR IN THE BLANK SPACE BELOW. IF NO ADDITIONAL PROVISONS ARE INSERTED, PLEASE DRAW A LINE THROUGH THE SPACE BELOW.

Landlord and Tenant have signed this Lease at the place and on the dates specified adjacent to their signatures below and have initialed all Riders which are attached to or incorporated by reference in this Lease.

"LANDLORD"

Signed on _____, 19 _____

at _____

MAJESTIC REALTY CO., a California corporation

By: /s/ Edward P. Roski, Jr.

Its: _____

By: /s/ David A. Wheeler

Its: _____

MAJESTIC-MAPA PROPERTIES, LLC,
a California limited liability company

By: MAJESTIC REALTY CO.,
a California corporation,
its manager

By: /s/ David A. Wheeler

Its: Executive Vice President

By: /s/ Edward P. Roski Jr.

Its: President

"TENANT"

Signed on _____, 19 _____

at _____

GILEAD SCIENCES, Inc. a Delaware corporation

By: /s/ Crispin G.S. Eley

Its: V.P. Pharmaceutical Operations

By: /s/ Anthony D. Caracciolo

Its: V.P. Manufacturing

IN ANY REAL ESTATE TRANSACTION, IT IS RECOMMENDED THAT YOU CONSULT WITH A PROFESSIONAL, SUCH AS A CIVIL ENGINEER, INDUSTRIAL HYGIENIST OR OTHER PERSON WITH EXPERIENCE IN EVALUATING THE CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF ASBESTOS, HAZARDOUS MATERIALS AND UNDERGROUND STORAGE TANKS.

THIS PRINTED FORM LEASE HAS BEEN DRAFTED BY LEGAL COUNSEL AT THE DIRECTION OF THE SOUTHERN CALIFORNIA CHAPTER OF THE SOCIETY OF INDUSTRIAL AND OFFICE REALTORS,® INC. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE SOUTHERN CALIFORNIA CHAPTER OF THE SOCIETY OF INDUSTRIAL AND OFFICE REALTORS,® INC., ITS LEGAL COUNSEL, THE REAL ESTATE BROKERS NAMED HEREIN, OR THEIR EMPLOYEES OR AGENTS, AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS LEASE OR OF THIS TRANSACTION. LANDLORD AND TENANT SHOULD RETAIN LEGAL COUNSEL TO ADVISE THEM ON SUCH MATTERS AND SHOULD RELY UPON THE ADVICE OF SUCH LEGAL COUNSEL.

ADDENDUM TO INDUSTRIAL REAL ESTATE LEASE

This Addendum (" **Addendum** ") is made and entered into by MAJESTIC-MAPA PROPERTIES, LLC., a California limited liability company and MAJESTIC REALTY CO., a California corporation (collectively, " **Landlord** ") and GILEAD SCIENCES, INC., a Delaware corporation (" **Tenant** "), and is dated as of the date set forth on Section 1.01 of the Industrial Real Estate Lease between Landlord and Tenant (" **Lease** ") to which this Addendum is attached. The promises, covenants, agreements and declarations made and set forth herein are intended to and shall have the same force and effect as if set forth at length in the body of the Lease. To the extent that the provisions of this Addendum are inconsistent with the terms and conditions of the Lease, the terms and conditions of this Addendum shall control.

SECTION 1.12(a) BASE RENT .

Commencing as of the twenty-fifth (25th) "Lease Month," as that term is defined below, and continuing through the thirty-sixth (36th) Lease Month, the monthly Base Rent shall be an amount equal to TWENTY-FOUR THOUSAND SIX HUNDRED FIFTY-SIX AND NO/100 DOLLARS ($24,656.00). Commencing as of the thirty-seventh (37th) Lease Month and continuing through the sixtieth (60th) Lease Month, the monthly Base Rent shall be equal to TWENTY-FIVE THOUSAND SEVEN HUNDRED TWENTY-EIGHT AND NO/100 DOLLARS ($25,728.00). The term "Lease Month" shall mean each consecutive month during the Lease Term, with the first Lease Month commencing on the Lease Commencement Date.

SECTION 5.02 MANNER OF USE .

Section 5.02 is hereby amended by adding the following at the end thereof:

> "Tenant shall not do anything or suffer anything to be done in or about the Property which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated (collectively, " **Applicable Laws** "). Tenant shall, at its sole cost and expense, promptly comply with any Applicable Laws which relate to (i) Tenant's specific use of the Property, (ii) any alteration or any tenant improvements or which are triggered by any alteration or any tenant improvement made by Tenant. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by any state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Landlord and Tenant, as applicable, agree, at its sole cost and expense to comply promptly with such standards or regulations. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant. Landlord shall comply with all Applicable Laws relating to the Property, as of the Lease Commencement Date if compliance with such Applicable Laws is required by a governmental agency and provided that compliance with such Applicable Laws is not the responsibility of Tenant under this Lease, and provided further that Landlord's failure to comply therewith would unreasonably and materially affect the safety of Tenant's employees or create a significant health hazard for Tenant's employees."

SECTION 5.03 HAZARDOUS MATERIALS .

5.03.1 DEFINITIONS .

A. " **Hazardous Material** " means any substance, whether solid, liquid or gaseous in nature:

(i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

(ii) which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or

amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. section 1801 et seq.), the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.), the Clean Air Act (42 U.S.C. section 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. section 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. section 651 et seq.), as these laws have been amended or supplemented; or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or

(iv) the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or

(v) the presence of which on adjacent properties could constitute a trespass by Tenant; or

(vi) without limitation which contains gasoline, diesel fuel or other petroleum hydrocarbons; or

(vii) without limitation which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or

(viii) without limitation which contains radon gas.

B. " **Environmental Requirements** " means all applicable present and future:

(i) statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items (including, but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation), of all Governmental Agencies; and

(ii) all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation, all requirements pertaining to emissions, discharges, releases, or threatened releases of Hazardous Materials or chemical substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials or chemical substances.

C. " **Environmental Damages** " means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses (including the expense of investigation and defense of any claim, whether or not such claim is ultimately defeated, or the amount of any good faith settlement or judgment arising from any such claim) of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable (including without limitation reasonable attorneys' fees and disbursements and consultants' fees) any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property and the activities thereon, regardless of whether the existence of such Hazardous Material or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property. Environmental Damages include, without limitation:

(i) damages for personal injury, or injury to property or natural resources occurring upon or off of the Property, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest, penalties and damages arising from claims brought by or on behalf of employees of Tenant (with respect to which Tenant waives any right to raise as a defense against Landlord any immunity to which it may be entitled under any industrial or worker's compensation laws);

(ii) fees, costs or expenses incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of such Environmental Requirements, including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any Governmental Agency or reasonably necessary to make full economic use of the Property or any other property in a manner consistent with its current use or otherwise expended in connection with such conditions, and including, without limitation, any attorneys' fees, costs and expenses incurred in enforcing the provisions of this Lease or collecting any sums due hereunder;

(iii) liability to any third person or Governmental Agency to indemnify such person or Governmental Agency for costs expended in connection with the items referenced in subparagraph (ii) above; and

(iv) diminution in the fair market value of the Property, including, without limitation, any reduction in fair market rental value or life expectancy of the Property or the improvements located thereon or the restriction on the use of or adverse impact on the marketing of the Property or any portion thereof.

D. " **Governmental Agency** " means all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states, counties, cities and political subdivisions thereof.

E. The " **Tenant Group** " means Tenant, Tenant's successors, assignees, guarantors, officers, directors, agents, employees, invitees, permitees or other parties under the supervision or control of Tenant or entering the Property during the term of this Lease with the permission or knowledge of Tenant other than Landlord or its agents or employees.

5.03.2 PROHIBITIONS .

A. Other than normal quantities of general office supplies and except as specified on Exhibit "D" attached hereto, Tenant shall not cause, permit or suffer any Hazardous Material to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Property by the Tenant Group, or any other person without the prior written consent of Landlord. From time to time during the term of this Lease, Tenant may request Landlord's approval of Tenant's use of other Hazardous Materials, which approval may be withheld in Landlord's sole discretion. Tenant shall, prior to the Commencement Date, provide to Landlord for those Hazardous Materials described on Exhibit "D" (a) a description of handling, storage, use and disposal procedures, and (b) all "community right to know" plans or disclosures and/or emergency response plans which Tenant is required to supply to local Governmental Agencies pursuant to any Environmental Requirements.

B. Tenant shall not cause, permit or suffer the existence or the commission by the Tenant Group, or by any other person, of a violation of any Environmental Requirements upon, about or beneath the Property.

C. Tenant shall neither create or suffer to exist, nor permit the Tenant Group to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind with respect to the Property, including, without limitation, any lien imposed pursuant to section 107 (f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. section 9607(1)) or any similar state statute.

D. Tenant shall not install, operate or maintain any above or below grade tank, sump, pit, pond, lagoon or other storage or treatment vessel or device on the Property without Landlord's prior written consent.

5.03.3 INDEMNITY .

A. Tenant, its successors, assigns and guarantors, agree to indemnify, defend, reimburse and hold harmless:

(i) Landlord; and

(ii) any other person who acquires all or a portion of the Property in any manner (including purchase at a foreclosure sale) or who becomes entitled to exercise the rights and remedies of Landlord under this Lease; and

(iii) the directors, officers, shareholders, employees, partners, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees, heirs, devisees, successors, assigns and invitees of such persons, from and against any and all Environmental Damages which exist as a result of the activities or negligence of the Tenant Group or which exist as a result of the breach of any warranty or covenant or the inaccuracy of any representation of Tenant contained in this Lease, or by Tenant's remediation of the Property or failure to meet its obligations contained in this Lease.

B. The obligations contained in this Section 5.03 shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings, even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against such indemnified persons. Landlord, at its sole expense, may employ additional counsel of its choice to associate with counsel representing Tenant.

C. Landlord shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or actions initiated in connection with Tenant's Hazardous Material activities. Landlord may also negotiate, defend, approve and appeal any action taken or issued by any applicable governmental authority with regard to contamination of the Property by a Hazardous Material.

D. The obligations of Tenant in this paragraph shall survive the expiration or termination of this Lease.

E. The obligations of Tenant under this paragraph shall not be affected by any investigation by or on behalf of Landlord, or by any information which Landlord may have or obtain with respect thereto.

5.03.4 OBLIGATION TO REMEDIATE .

In addition to the obligation of Tenant to indemnify Landlord pursuant to this Lease, Tenant shall, upon approval and demand of Landlord, at its sole cost and expense and using contractors approved by Landlord, promptly take all actions to remediate the Property which are required by any Governmental Agency, or which are reasonably necessary to mitigate Environmental Damages or to allow full economic use of the Property, which remediation is necessitated from the presence upon, about or beneath the Property, at any time during or upon termination of this Lease, of a Hazardous Material or a violation of Environmental Requirements existing as a result of the activities or negligence of the Tenant Group. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off the Property, which shall be performed in a manner approved by Landlord. Tenant shall take all actions necessary to restore the Property to the condition existing prior to the Tenant Group's introduction of Hazardous Material upon, about or beneath the Property, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies.

5.03.5 RIGHT TO INSPECT .

Landlord shall have the right in its sole and absolute discretion, but not the duty, to enter and conduct an inspection of the Property, including invasive tests, at any reasonable time to determine whether Tenant is complying with the terms of the Lease, including, but not limited to, the compliance of the Property and the activities thereon with Environmental Requirements and the existence of Environmental Damages as a result of the condition of the Property or surrounding properties and activities thereon. Landlord shall have the right, but not the duty, to retain any independent professional consultant (the " **Consultant** ") to enter the Property to conduct such an inspection or to review any report prepared by or for Tenant concerning such compliance. The cost of the Consultant shall be paid by Landlord unless such investigation discloses a violation of any Environmental Requirement by the Tenant Group or the existence of a Hazardous Material on the Property or any other property caused by the activities or negligence of the Tenant Group (other than

Hazardous Materials used in compliance with all Environmental Requirements and previously approved by Landlord), in which case Tenant shall pay the cost of the Consultant. Tenant hereby grants to Landlord, and the agents, employees, consultants and contractors of Landlord the right to enter the Property and to perform such tests on the Property as are reasonably necessary to conduct such reviews and investigations. Landlord shall use commercially reasonable efforts to minimize interference with the business of Tenant.

5.03.6 NOTIFICATION .

If Tenant shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of Tenant for Environmental Damages in connection with the Property or pastor present activities of any person thereon, including, but not limited to, notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, then Tenant shall deliver to Landlord within ten (10) days of the receipt of such notice or communication by Tenant, a written description of said violation, liability, or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of Landlord to defend or otherwise respond to any such notification.

If requested by Landlord, Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials other than general office supplies referred to in Section 5.03.2 of this Addendum, which were used, generated, treated, handled, stored or disposed of on the Property or which Tenant intends to use, generate, treat, handle, store or dispose of on the Property. The foregoing in no way shall limit the necessity for Tenant obtaining Landlord's consent pursuant to Section 5.03.2 of this Addendum.

5.03.7 SURRENDER OF PROPERTY .

In the ninety (90) days prior to the expiration or termination of the Lease Term, and for up to ninety (90) days after Tenant fully surrenders possession of the Property, Landlord may have an environmental assessment of the Property performed in accordance with Section 5.03.5 of this Addendum. Tenant shall perform, at its sole cost and expense, any clean-up or remedial work recommended by the Consultant which is necessary to remove, mitigate or remediate any Hazardous Materials and/or contamination of the Property caused by the activities or negligence of the Tenant Group.

5.03.8 ASSIGNMENT AND SUBLETTING .

In the event the Lease provides that Tenant may assign the Lease or sublet the Property subject to Landlord's consent and/or certain other conditions, and if the proposed assignee's or sublessee's activities in or about the Property involve the use, handling, storage or disposal of any Hazardous Materials other than general office supplies or those used by Tenant and in quantities and processes similar to Tenant's uses in compliance with the Addendum, (i) it shall be reasonable for Landlord to withhold its consent to such assignment or sublease in light of the risk of contamination posed by such activities and/or (ii) Landlord may impose an additional condition to such assignment or sublease which requires Tenant to reasonably establish that such assignee's or sublessee's activities pose no materially greater risk of contamination to the Property than do Tenant's permitted activities in view of (a) the quantities, toxicity and other properties of the Hazardous Materials to be used by such assignee or sublessee, (b) the precautions against a release of Hazardous Materials such assignee or sublessee agrees to implement, (c) such assignee's or sublessee's financial condition as it relates to its ability to fund a major clean-up and (d) such assignee's or sublessee's policy and historical record respecting its willingness to respond to the clean up of a release of Hazardous Materials.

5.03.9 SURVIVAL OF HAZARDOUS MATERIALS OBLIGATION .

Tenant's breach of any of its covenants or obligations under this Addendum shall constitute a material default under the Lease. The obligations of Tenant under this Addendum shall survive the expiration or earlier termination of the Lease without any limitation, and shall constitute obligations that are independent and severable from Tenant's covenants and obligations to pay rent under the Lease.

5.03.10 LANDLORD'S HAZARDOUS MATERIALS OBLIGATIONS .

Landlord shall be solely responsible to remediate claims, judgments, damages, penalties, fines, costs, liabilities and losses which arise as a result of any contamination directly arising from the introduction of Hazardous Materials into the Property by Landlord, its agents, employees or contractors in compliance with applicable law. Notwithstanding the foregoing, Landlord shall not be responsible or liable for any consequential damages. The obligation of Landlord in this Section 5.03.10 shall survive the expiration or termination of this Lease.

SECTION 5.04 SIGNS .

Notwithstanding the foregoing, subject to Landlord's prior written approval, which shall not be unreasonably withheld, delayed or conditioned, and provided all signs are in keeping with the quality, design and style of the industrial park within which the Property is located, Tenant, at its sole cost and expense, may install identification signage (limited to one monument sign (" **Monument Sign** ") and two property building signs (" **Building Sign** ") per street frontage (collectively, " **sign(s)** ") in the Property; provided, however, that (i) the size, color, location, materials and design of such sign shall be subject to Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned; (ii) such sign shall comply with all applicable governmental rules and regulations and the Property's covenants, conditions and restrictions; (iii) such sign shall be personal to the original Tenant named in Section 1.03 of this Lease (and not any other assignee, sublessee or transferee of Tenant's interest in this Lease) (" **Original Tenant** "); (iv) such Building Sign shall not be painted directly on the building or attached or placed on the roof of the building; (v) such sign shall only advertise Gilead Sciences, and its pharmaceutical business; (vi) consistent with Landlord's signage program and rules; (vii) Tenant's continuing signage right shall be contingent upon the Original Tenant actually occupying the entire Property; and (viii) Tenant's continuing signage right shall be contingent upon Tenant maintaining such sign in a first-class condition. Tenant shall be responsible for all costs incurred in connection with the design, construction, installation, repair and maintenance of Tenant's sign(s). Upon the expiration or earlier termination of this Lease, Tenant shall cause Tenant's sign(s) to be removed and shall repair any damage caused by such removal. Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately approved by Landlord may be removed by Landlord without notice by Landlord to Tenant at Tenant's sole cost and expense."

SECTION 5.05 LANDLORD'S INDEMNITY .

Landlord agrees to indemnify and hold harmless Tenant against and from any and all claims and costs, reasonable attorneys' fees or liabilities incurred as a direct result of any claim or any action or proceeding directly arising from the following, except to the extent of Tenant's actions or omissions: (i) any breach or default in the performance of any obligation of Landlord hereunder; or (ii) any active negligence or willful misconduct of Landlord, or any of its agents, employees, invitees, licensees or contractors. Notwithstanding anything to the contrary set forth in this Lease, either party's agreement to indemnify the other party as set forth in this Section 5.05 shall be ineffective to the extent the matters for which such party agreed to indemnify the other party are covered by insurance required to be carried by the non-indemnifying party pursuant to this Lease. Further, Tenant's agreement to indemnify Landlord and Landlord's agreement to indemnify Tenant pursuant to this Section 5.05 , are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried pursuant to the provisions of this Lease, to the extent such policies cover, or if carried, would have covered the matters, subject to the parties' respective indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Lease. Notwithstanding anything to the contrary contained in this Lease, nothing in this Lease shall impose any obligations on Tenant or Landlord to be responsible or liable for, and each hereby releases the other from all liability for, consequential damages other than those consequential damages incurred by Landlord in connection with a holdover of the Property by Tenant after the expiration or earlier termination of this Lease, incurred by Landlord in connection with the contamination of the Property or any property resulting from the presence or use of Hazardous Materials caused or permitted by the Tenant Group or incurred by Landlord in connection with any repair, physical construction or improvement work performed by or on behalf of Tenant in the Property. If either party breaches this Lease by its failure to carry the required insurance hereunder, such failure shall automatically be deemed to be a covenant and agreement by the failing party to self-insure such required coverage, with full waiver of subrogation in favor of the other party.

SECTION 6.03 LANDLORD'S OBLIGATIONS .

Subject to the provisions of Article Seven (Damage or Destruction) and Article Eight (Condemnation), and except for damage caused by any act or omission of Tenant, or Tenant's employees, agents, contractors or invitees, or as a result of Tenant's alterations, Landlord shall keep the structural portions of the building foundation, roof structure and the exterior walls on the Property in good order, condition and repair. However, Landlord shall not be obligated to maintain or repair roof membrane, windows, doors, plate glass or the surfaces of walls. Landlord shall not be obligated to make any repairs under this Section 6.03 until a reasonable time after receipt of a written notice from Tenant of the need for such repairs. Tenant waives the benefit of any present or future law which might give Tenant the right to repair the Property at Landlord's expense or to terminate the Lease because of the condition of the Property. Landlord hereby assigns to Tenant all warranties and guaranties by the contractor who constructed the building and Tenant Improvements located on the Property and Tenant waives all claims against Landlord relating thereto.

SECTION 6.06 CONDITION UPON TERMINATION .

Section 6.06 is hereby amended by adding the following at the end thereof:

"Notwithstanding the foregoing, Tenant may request at the time it seeks Landlord's consent to any alterations, additions or improvements (collectively, the " **Alterations** "), that Landlord state at the time it grants approval, whether or not removal will be required at the end of the Lease Term. Such request shall specifically cite this Lease provision and Landlord's obligation to make such statement."

SECTION 9.02 TENANT AFFILIATE .

Notwithstanding anything to the contrary contained in Section 9.01 of this Lease, an assignment or subletting of all or a portion of the Property to an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant) or to any corporation resulting from a merger of, consolidation with or acquisition of Tenant (collectively, " **Tenant Affiliate** "), shall not be deemed a transfer under Section 9.01 for which consent is required, provided that: (i) Tenant notifies Landlord of any such assignment or sublease; (ii) promptly supplies Landlord with any documents or information requested by Landlord regarding such assignment or sublease or such affiliate; (iii) if requested by Landlord, guaranty this Lease using Landlord's standard guaranty form; (iv) Tenant Affiliate assumes all of Tenant's obligations under this Lease; and (v) such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease. " **Control** ," as used herein, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity. In such instance, Tenant shall not be obligated to pay Landlord the increased Base Rent described in Section 9.05(b)(i) resulting from a Profit derived from Tenant's Affiliate.

SECTION 10.07 ARBITRATION .

10.07.1 General Submittals to Arbitration . The submittal of all matters to arbitration in accordance with the terms of this Section 10.07 is the sole and exclusive method, means and procedure to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to, any matter relating to Landlord's failure to approve an assignment, sublease or other transfer of Tenant's interest in the Lease under the terms of this Lease, any other defaults by Landlord, or any default by Tenant, except for (i) the determination of the Fair Rental Value, which determination shall be made pursuant to Option to Extend Term Lease Rider attached to this Lease, (ii) all claims by either party which (A) seek anything other than enforcement of rights under this Lease, including, without limitation, a claim of constructive eviction, or (B) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, (iii) Landlord's exercise of any unlawful detainer rights pursuant to California law or rights or remedies used by Landlord to gain possession of the Property or terminate Tenant's right of possession to the Property, and disputes relating thereto, which matters shall be resolved by suit filed in the Superior Court of Los Angeles County, California, the decision of which court shall be subject to appeal pursuant to applicable law, and (iv) claims for restraining orders or other injunctive relief. The parties hereby irrevocably waive any and all rights to the contrary and shall at all times conduct themselves in strict, full, complete

and timely accordance with the terms of this Section 10.07 and all attempts to circumvent the terms of this Section 10.07 shall be absolutely null and void and of no force or effect whatsoever. As to any matter submitted to arbitration (except with respect to the payment of money) to determine whether a matter would, with the passage of time, constitute a default under this Lease, such passage of time shall not commence to run until any such affirmative arbitrated determination, as long as it is simultaneously determined in such arbitration that the challenge of such matter as a potential default by Tenant or Landlord, as the case may be, was made in good faith. As to any matter submitted to arbitration with respect to the payment of money, to determine whether a matter would, with the passage of time, constitute a default under this Lease, such passage of time shall not commence to run in the event that the party which is obligated to make the payment does in fact make the payment to the other party. Such payment can be made "under protest," which shall occur when such payment is accompanied by a good faith notice stating the reasons that the party has elected to make a payment under protest. Such protest will be deemed waived unless the subject matter identified in the protest is submitted to arbitration as set forth in this Section 10.07 .

10.07.2 Retired Judges . Any dispute to be arbitrated pursuant to the provisions if this Section 10.07 shall be determined by binding arbitration before a retired judge of the Superior Court of the State of California, or a retired judge from the California Court of Appeal (the " **Arbitrator** "). Such arbitration shall be initiated by the parties, or either of them, within ten (10) days after either party sends written notice (the " **Arbitration Notice** ") of a demand to arbitrate by registered or certified mail to the other party. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. The parties shall thereupon select a retired judge from either the Superior Court of California or the California Court of Appeal to serve as the Arbitrator. If the parties are unable to promptly agree on the identity of the Arbitrator, then the retired judge which shall serve as Arbitrator shall be selected by the Presiding Judge of the Los Angeles County Superior Court. Upon selection of the Arbitrator, the parties' dispute shall be resolved by binding arbitration under the commercial arbitration rules of the American Arbitration Association then in effect.

10.07.3 Arbitration Procedure .

10.07.3.1 Pre-Decision Actions . The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances.

10.07.3.2 The Decision . The arbitration shall be conducted in Los Angeles, California. Any party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of California and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination, and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the Superior Court of the State of California, subject only to challenge on the grounds set forth in California Code of the Civil Procedure Section 1286.2. The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the California courts pursuant to the provisions of this Lease. The Arbitrator may award costs, including, without limitation, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in the Arbitrator's discretion. The Arbitrator's fees and costs shall be paid by the non-prevailing party as determined by the Arbitrator in the Arbitrator's discretion. A party shall be determined by the Arbitrator to be the prevailing party if its proposal for the resolution of dispute is the closer to that adopted by the Arbitrator.

SECTION 11.01 NON-DISTURBANCE .

Landlord shall use commercially reasonable efforts to provide Tenant with a non-disturbance agreement, in such form as attached hereto as Exhibit "B" from Landlord's presently existing lender.

SECTION 13.12 FORCE MAJEURE .

If Landlord or Tenant cannot perform any of its obligations due to events beyond such applicable party's control, except with respect to the obligations imposed with regard to Base Rent, Additional Rent and other charges to be paid by Tenant pursuant to this Lease, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond Landlord's or Tenant's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction, waiting periods for obtaining governmental permits or approval or weather conditions.

ARTICLE FIFTEEN
REVENUE AND EXPENSE ACCOUNTING

Landlord and Tenant agree that, for all purposes (including any determination under Section 467 of the Internal Revenue Code), rental income will accrue to the Landlord and rental expenses will accrue to the Tenant in the amounts and as of the dates rent is payable under the Lease.

ARTICLE SIXTEEN
LANDSCAPE MAINTENANCE

Notwithstanding the provisions of Sections 6.03 and 6.04 , Landlord shall maintain, at Tenant's expense, the landscaping of the Property and, if applicable, the common areas. Such maintenance shall include gardening, tree trimming, replacement or repair of landscaping, landscape irrigation systems and similar items. Such maintenance shall also include sweeping and cleaning of asphalt, concrete or other surfaces on the driveway, parking areas, yard areas, loading areas or other paved or covered surfaces. In connection with Landlord's obligations under this Article, Landlord may enter into a contract with a landscape contractor of Landlord's choice to provide some (but not necessarily all) of the maintenance services listed above. Tenant's monthly cost of such contract, hereinafter referred to as the "Landscape Fee" is currently SIX HUNDRED FIFTY AND NO/100 DOLLARS ($650.00). Landlord shall use its commercially reasonable efforts to maintain competitive contracts and shall promptly notify Tenant of any increase in the Landscape Fee. Tenant agrees to pay monthly to Landlord, as Additional Rent, the Landscape Fee. Tenant shall make such payment together with Tenant's monthly rental payment, without the necessity of notice from Landlord. It is the understanding of the parties that the Landscape Fee only pertains to routine landscape maintenance on the Property and that Landlord may incur expenses in addition to the Landscape Fee (which shall not include Landlord's overhead and Landlord's administrative expenses) in meeting its obligations set forth above. Tenant shall pay to Landlord, as Additional Rent, within ten (10) days after demand therefore, the cost of such additional expenses.

ARTICLE SEVENTEEN
PURCHASE OPTION - RIGHT OF FIRST REFUSAL

Landlord hereby grants to the original Tenant, whose name is set forth in Section 1.03 of this Lease (" **Original Tenant** ") and Tenant Affiliate, a one-time right of first refusal to purchase the Property, in accordance with the terms of this Article 17 . Landlord agrees that provided Tenant has not been in default under this Lease, Landlord shall deliver written notice to Tenant (" **Landlord's First Refusal Notice** ") prior to the time Landlord intends to submit to a "third party," or accept from a "third party," a bona fide proposal to purchase the entire Property. For purposes of this Article 17 a "third party" shall not include a party affiliated or related to Landlord. Landlord shall identify in Landlord's First Refusal Notice the economic terms upon which Landlord would sell the Property to Tenant, including, without limitation, the anticipated closing date and the purchase price to be paid for the Property (collectively, the " **Economic Terms** ").

SECTION 17.1 PROCEDURE FOR ACCEPTANCE .

On or before the date which is seven (7) days after Tenant's receipt of Landlord's First Refusal Notice (the " **Election Day** "), Tenant shall deliver written notice to Landlord (" **Tenant's Election Notice** ") pursuant to which Tenant shall have the one-time right to elect either to (i) purchase the Property upon the Economic Terms set forth in the First Refusal Notice, or (ii) refuse to purchase the Property. If Tenant does not respond in writing to Landlord's First Refusal Notice by the Election Date, Tenant shall be deemed to have elected not to purchase the Property.

SECTION 17.2 TENANT'S ELECTION NOT TO PURCHASE .

If Tenant elects or is deemed to have elected not to purchase the Property, then Tenant's first refusal rights set forth in this Article 17 shall terminate with respect to the Property, and Landlord shall have the right to sell the Property to anyone to whom Landlord desires on any terms Landlord desires, provided, however, if Tenant sends a notice in accordance with Section 17.1(ii) above then Tenant's right of first refusal may arise again if Landlord intends to sell the Property at a purchase price that is ten percent (10%) below such purchase price set forth in the Landlord First Refusal Notice or on other economic terms that are materially more favorable than such set forth in Landlord's First Refusal Notice.

SECTION 17.3 CONDITION OF PROPERTY .

If Tenant elects to purchase the Property pursuant to this Article 17 , Landlord and Tenant shall promptly execute the proper documents necessary to memorialize Tenant's purchase of the Property upon the terms and conditions set forth in this Article 17 . If Tenant purchases the Property pursuant to the terms of this Article 17 , Tenant shall take the Property in its "AS-IS" condition, unless otherwise specified as part of the Economic Terms in Landlord's First Refusal Notice, subject, however, to Tenant's review and approval of a preliminary title report within ten (10) days after receipt thereof.

SECTION 17.4 SUSPENSION OF RIGHT OF FIRST REFUSAL .

Tenant shall not have the right to purchase the Property as provided in this Article 17 if, as of the date of attempted exercise of this right of first refusal by Tenant or as of the date escrow closes, Tenant has been in default under this Lease beyond applicable notice and cure periods. In addition, and notwithstanding anything to the contrary contained in this Article 17 , the rights to purchase the Property contained in this Article 17 shall be personal to the Original Tenant and Tenant Affiliate and may only be exercised by the Original Tenant (and not any assignee, sublessee or other transferee of Tenant's interest in this Lease) and Tenant Affiliate if, at the time of the attempted exercise of any such right of first refusal, the Original Tenant and Tenant Affiliate occupies the entire Property.

SECTION 17.5 MULTIPLE BUILDING TRANSACTIONS .

Notwithstanding anything to the contrary herein, Tenant's right of first refusal shall not apply to and shall not include: (i) "REIT" transactions; (ii) if the Property is part of multiple properties included within a "package sale"; (iii) any sale or transfer that is not for 100% of the Property; and (iv) any sale or transfer that is with a party affiliate or related to Landlord.

SECTION 17.6 1031 EXCHANGE .

As an accommodation to Landlord, Tenant agrees to cooperate with Landlord in effectuating a like-kind exchange of the Property pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the " **Exchange** "), including the execution of documents related thereto.

FIRST AMENDMENT TO INDUSTRIAL REAL ESTATE LEASE

This FIRST AMENDMENT TO INDUSTRIAL REAL ESTATE LEASE (" **First Amendment** ") is made and entered into as of March 3, 2003 (the " **First Amendment Date** "), by and between MAJESTIC-MAPA PROPERTIES, LLC, a California limited liability company (" **Landlord** "), and GILEAD SCIENCES, INC., a Delaware corporation (" **Tenant** ").

R E C I T A L S

A. Tenant and Landlord entered into that certain Industrial Real Estate Lease (the " **Lease** "), dated July 20, 2000, whereby Landlord leased to Tenant and Tenant leased from Landlord approximately 53,600 square feet of space (the " **Property** ") more commonly known as 542 West Covina Boulevard, San Dimas, California.

B. The parties desire to amend the Lease on the terms and conditions set forth in this First Amendment.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Terms** . All undefined terms when used herein shall have the same respective meanings as are given such terms in the Lease unless expressly provided otherwise in this First Amendment.

2. **Lease Term** .

2.1 **Extended Lease Term** . The Lease Term is currently scheduled to expire on May 31, 2006 (the " **Lease Expiration Date** "). As of the First Amendment Date, the Lease Term is extended to November 30, 2013 (the " **Revised Lease Expiration Date** "), and, unless sooner terminated under the terms of the Lease, as amended by this First Amendment, will expire on the Revised Lease Expiration Date. The period of time beginning on the day following the Lease Expiration Date and continuing through the Revised Lease Expiration Date is the " **Extended Lease Term** ."

2.2 **Termination Right** . Tenant shall have the one-time right to terminate the Lease, as amended, effective as of December 1, 2009 (the " **Termination Date** "), provided that: (a) Landlord receives written notice (the " **Termination Notice** ") from Tenant on or before the date which is twelve (12) months prior to the Termination Date stating that Tenant intends to terminate the Lease, as amended, pursuant to the terms and conditions of this Section 2.2 ; (b) concurrent with Landlord's receipt of the Termination Notice, Landlord receives from Tenant the sum of ONE HUNDRED FIFTY-FIVE THOUSAND SIX HUNDRED FIFTY-FOUR AND 40/100 DOLLARS ($155,654.40) as consideration for and as a condition precedent to such early termination; and (c) Tenant has not been in default under the Lease, as amended, as of the date of

Tenant's delivery of the Termination Notice or Termination Date. Provided that Tenant terminates the Lease, as amended, pursuant to the terms of this Section 2.2 , the Lease, as amended, shall automatically terminate and be of no further force or effect as of the Termination Date, and Landlord and Tenant shall be relieved of their respective obligations under the Lease, as amended, specifically including, without limitation, any right, if any, Tenant may have to audit or review Landlord's books and records or to contest Tenant's payment of Additional Rent; provided, however, notwithstanding anything to the contrary contained in the Lease, as amended, with respect to any obligation of Tenant under the Lease, as amended, which accrues prior to the Termination Date and is not satisfied by Tenant prior to the Termination Date (e.g., Tenant's payment of Rent and Tenant's maintenance and repair obligations), and Tenant's obligations that survive the termination of the Lease, as amended (including, without limiting to, Tenant's obligation to remediate any Environmental Damages), Landlord shall have all the rights and remedies with respect to such obligations as set forth in the Lease, as amended. Tenant shall vacate the Property pursuant to the Lease, as amended, and surrender and deliver exclusive possession thereof to Landlord on or before the Termination Date in accordance with the provisions of the Lease, as amended. In the event Tenant retains possession of the Property or any part thereof after the Termination Date, then the provisions of Section 2.04 of the Lease, as amended, shall apply. The rights contained in this Section 2.2 shall be personal to the Tenant named in the Summary (and not any assignee, sublessee or other transferee of Tenant's interest in the Lease, as amended) (the " **Original Tenant** ") and may only be exercised by the Original Tenant if the Original Tenant occupies the entire Property.

3. **Rent** .

3.1 **Base Rent** . Commencing as of June 1, 2006 and continuing until May 31, 2011, Tenant will pay an amount equal to TWENTY-FIVE THOUSAND NINE HUNDRED FORTY-TWO AND 40/100 DOLLARS ($25,942.40) per month as Base Rent due under the Lease, as amended by this First Amendment. Commencing as of June 1, 2011 and continuing until the Revised Lease Expiration Date, Tenant will pay an amount equal to TWENTY-EIGHT THOUSAND FIVE HUNDRED THIRTY-SIX AND 64/100 DOLLARS ($28,536.64) per month as Base Rent due under the Lease, as amended by this First Amendment.

3.2 **Security Deposit; Termination; Advance Payment** . Section 3.04 of the Lease shall be deleted and replaced as follows:

> "Upon termination of this Lease under Article Seven (Damage or Destruction), Article Eight (Condemnation) or any other termination not resulting from Tenant's default, and after Tenant has vacated the Property in the manner required by this Lease, Landlord shall (within sixty (60) days from Tenant delivering exclusive possession of the Property to Landlord) refund to Tenant (or Tenant's successor) the unused portion of the Security Deposit, any advance rent or other advance payments made by Tenant to Landlord, and any amounts paid for real property taxes and other reserves which apply to any time periods after termination of the Lease."

3.3 **Real Estate Taxes**. Tenant shall, as set forth in Section 4.02(a) of the Lease, pay the real property taxes directly to the respective taxing authority.

3.4 **Real Property Tax Penalty**. Section 4.02(a) of the Lease shall be revised that Tenant shall only be responsible for any real property tax penalty to the extent such penalty is caused by Tenant's acts or omissions.

3.5 **Late Charge**. Effective as of the commencement of the Extended Lease Term, the late charge as set forth in Section 4.05 of the Lease shall be reduced to eight percent (8%).

3.6 **Landlord's Books and Records**. In the event that Tenant disputes the amount of any statement (" **Statement** ") delivered by Landlord, then within six (6) months after receipt of such Statement by Tenant, Tenant shall have the right to request and receive from Landlord any reasonable backup information in Landlord's possession regarding such Statement.

4. **Hazardous Material**. Effective as of the commencement of the Extended Lease Term, the following revisions shall be made to Section 5.03 of the Lease as set forth below:

4.1 Section 5.03.3.C of the Lease shall be deleted and replaced as follows:

"Landlord shall have the right, but not the obligation, to join and participate in control, with Tenant's commercially reasonable consent, which consent shall not be unreasonably withheld, if it so elects, any legal proceedings or actions initiating connection with Tenant's Hazardous Material activities on the Property. Landlord may also negotiate, defend, approve and appeal any action taken or issued by any applicable governmental authority with regard to contamination of the Property by a Hazardous Material."

4.2 The following shall be added to the end of Section 5.03.3.E of the Lease:

"Landlord shall provide Tenant with copies of any information, report or related document that Landlord acquires, within thirty (30) days from completion and receipt of said report."

4.3 The first sentence of Section 5.03.5 of the Lease shall be deleted and replaced as follows:

"Landlord shall have the right in its sole and absolute discretion, but not the duty, to enter (upon twenty-four (24) hours notice, except no notice is required if Landlord has a reasonable belief that Tenant is creating Environmental Damage on the Property) and conduct an inspection of the Property, including invasive tests, during regular operative hours, to determine whether Tenant is complying with the terms of the Lease, including but not

limited to the compliance of the Property and the activities thereon with Environmental Requirements and the existence of Environmental Damages as a result of the condition of the Property or surrounding properties and activities thereon."

4.4 The first paragraph of Section 5.03.6 of the Lease shall be deleted and replaced as follows:

"If Tenant or Landlord shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of Tenant or Landlord for Environmental Damages in connection with the Property or past or present activities of any person thereon, including but not limited to notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, then Tenant or Landlord shall deliver to the other party within ten (10) days of the receipt of such notice or communication, a written description of said violation, liability, or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of Landlord to defend or otherwise respond to any such notification."

4.5 The following shall be added to the end of Section 5.03.7 of the Lease:

"Tenant shall have the right to observe Landlord's environmental assessment."

4.6 Section 5.03.10 of the Lease shall be deleted and replaced as follows:

"Landlord shall be solely responsible to remediate claims, judgments, damages, penalties, fines, costs, liabilities and losses which arise as a result of any contamination directly arising from the introduction of Hazardous Materials into the Property prior to Tenant's occupancy or by Landlord, its agents, employees or contractors, in compliance with applicable law. Notwithstanding the foregoing, Landlord shall not be responsible or liable for any consequential damages. The obligation of Landlord in this Section 5.03.10 shall survive the expiration or termination of this Lease."

5. **Alterations, Additions and Improvements** . Effective as of the commencement of the Extended Lease Term, the first sentence of Section 6.05 of the Lease shall be deleted and replaced as follows:

"Tenant shall not make any alterations, additions, or improvements to the Property without Landlord's prior written consent, which shall not be unreasonably withheld, except for non-structural alterations which do not exceed Sixty Thousand Dollars ($60,000) in cost per project and which are not visible from the outside of any building of which the Property is part."

6. **Estoppel Certificate**. Effective as of the commencement of the Extended Lease Term, the following shall be added to Section 1 1.04(c) of the Lease:

"Upon Tenant's written request, Landlord shall execute an estoppel certificate certifying to Landlord's actual knowledge without any duty to investigate whether or not: (i) this Lease has been modified; (ii) this Lease has been canceled; and (iii) Tenant is in default under this Lease."

7. **Tenant's Financial Condition**. Effective as of the commencement of the Extended Lease Term, the following shall be added to Section 11.05 of the Lease:

"If the Original Tenant has not been in monetary default under this Lease then Landlord's right to request financial statements shall not exceed one (1) time per calendar year (except if such financial statement is requested from Landlord's lender)."

8. **Tenant's Acceptance of the Property**. Landlord and Tenant acknowledge that Tenant has been occupying the Property pursuant to the Lease, since on or about April 2, 2001, and therefore Tenant continues to accept the Property in its presently existing, "as is" condition and Landlord has made no representation or warranty with regard to the condition of the Property or the suitability thereof for Tenant's business, nor shall Landlord be obligated to provide or pay for any improvement work or services related to the improvement of the Property.

9. **Deletions**. Effective as of the First Amendment Date the Option to Extend Term Lease Rider, attached to the Lease is hereby deleted and shall be of no further force or effect.

10. **Brokers**. The parties recognize that the only broker involved in the negotiation of this First Amendment is Majestic Realty Co. and agree that Landlord shall be solely responsible for the payment of any "Brokerage Commission" to such broker. Each party represents and warrants to the other that they have not dealt with any other broker in connection with the negotiation and consummation of this First Amendment and they each know of no other real estate broker, agent or finder who is, or might be, entitled to a commission or compensation in connection with this First Amendment. Each party agrees to indemnify and defend the other party against, and hold the other party harmless from, any and all claims, demands, losses, liabilities, damages, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any other real estate broker or agent.

11. **No Other Modifications**. Except as otherwise provided herein, all other terms and provisions of the Lease shall remain in full force and effect, unmodified by this First Amendment.

12. **Binding Effect**. The provisions of this First Amendment shall be binding upon and inure to the benefit of the heirs, representatives, successors and permitted assigns of the parties hereto.

13. **Authority**. The parties represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

14. **Counterparts**. This First Amendment may be executed in any number of original counterparts. Any such counterpart, when executed, shall constitute an original of this First Amendment, and all such counterparts together shall constitute one and the same First Amendment.

[Signatures on next page.]

IN WITNESS WHEREOF, the parties have entered into this First Amendment as of the date first set forth above.

"LANDLORD"	"TENANT"
MAJESTIC-MAPA PROPERTIES, LLC, a California limited liability company,	GILEAD SCIENCES, INC., a Delaware corporation
By: MAJESTIC REALTY CO., a California corporation Its Manager	By: /s/ Anthony D. Caracciolo Its:
By: : /s/ David A. Wheeler, President	By: /s/ Mark L. Perry
By:/s/ Jay H. Bradford Executive Vice President and Chief Financial Officer	Its:Executive Vice President, Operations

Exhibit 10.76

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

COLLABORATION AGREEMENT

by and among

GILEAD SCIENCES, INC.,

GILEAD HOLDINGS, LLC,

BRISTOL-MYERS SQUIBB COMPANY,

E.R. SQUIBB & SONS, L.L.C.,

and

BRISTOL-MYERS SQUIBB & GILEAD SCIENCES, LLC

Dated as of December 17, 2004

TABLE OF CONTENTS

Annexes:

THIS COLLABORATION AGREEMENT (this "Agreement") is made as of December 17, 2004 (the "Effective Date"), by and among Gilead Sciences, Inc., a corporation organized and existing under the laws of the State of Delaware and having its principal place of business at 333 Lakeside Drive, Foster City, CA 94404 ("Gilead Parent"), Gilead Holdings, LLC, a Delaware limited liability company and wholly-owned subsidiary of Gilead Parent ("Gilead Sub" and, collectively with Gilead Parent, "Gilead"), Bristol-Myers Squibb Company, a corporation organized and existing under the laws of the State of Delaware and having its principal place of business at 345 Park Avenue, New York, NY 10154 ("BMS Parent"), E.R. Squibb & Sons, L.L.C., a Delaware limited liability company and wholly-owned subsidiary of BMS Parent ("BMS Sub" and, collectively with BMS Parent, "BMS"), and Bristol-Myers Squibb & Gilead Sciences, LLC, a limited liability company organized and existing under the laws of the State of Delaware and having its principal place of business at 333 Lakeside Drive, Foster City, CA 94404 (the "JV") (Gilead, BMS and the JV, collectively, the "Parties" and each a "Party").

RECITALS

WHEREAS, Gilead has developed and is marketing a proprietary nucleotide reverse transcriptase inhibitor, Viread® (known under the generic name of tenofovir disoproxil fumarate ("TDF")), a proprietary nucleoside reverse transcriptase inhibitor, Emtriva® (known under the generic name of emtricitabine ("FTC")), and a fixed-dose co-formulated product containing TDF and FTC as its only active pharmaceutical ingredients, Truvada®, for the treatment of HIV infection in adults;

WHEREAS, BMS has developed and is marketing a proprietary non-nucleoside reverse transcriptase inhibitor, Sustiva® (known under the generic name of efavirenz ("EFV")) for the treatment of HIV infection in adults;

WHEREAS, Gilead and BMS desire to develop and commercialize in the United States, through a joint venture entity, a fixed-dose, co-formulated combination product containing TDF, FTC and EFV as its only active pharmaceutical ingredients;

WHEREAS, for that purpose, Gilead and BMS have formed the JV pursuant to that certain Operating Agreement entered into as of the Effective Date by and between Gilead Sub and BMS Sub (the "Operating Agreement");

WHEREAS, the Parties wish to allocate among themselves certain rights and duties relating to the development and commercialization of such a combination product, upon the terms and conditions of this Agreement, the Operating Agreement and the Ancillary Agreements (as defined below); and

WHEREAS, pursuant to the BMS Guarantee Agreement and the Gilead Guarantee Agreement (as such terms are defined below), each dated as of the Effective Date, BMS Parent and Gilead Parent are guaranteeing the performance of all of the obligations of

BMS Sub and Gilead Sub, respectively, under this Agreement, the Operating Agreement and all Ancillary Agreements to which the applicable Affiliate (as defined below) is or becomes a party;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1.
DEFINITIONS

1.1 "Act" shall mean the United States Food, Drug and Cosmetic Act, as amended.

1.2 "Actual BMS Percentage" shall mean, for each Calendar Year, the percentage applicable to BMS for such Calendar Year based on historical data and determined pursuant to Section 7.1(b).

1.3 "Actual Gilead Percentage" shall mean, for each Calendar Year, the percentage applicable to Gilead for such Calendar Year based on historical data and determined pursuant to Section 7.1(b).

1.4 "Actual Percentage" shall mean, with respect to BMS, the Actual BMS Percentage and, with respect to Gilead, the Actual Gilead Percentage.

1.5 "Actual Yield" shall have the meaning set forth in Annex K.

1.6 "Affiliate" of a Person shall mean any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this definition only, "control" and, with correlative meanings, the terms "controlled by" and "under common control with" shall mean (a) the possession, directly or indirectly, of the power to direct the management or policies of a Person, whether through the ownership of voting securities or by contract relating to voting rights or corporate governance, or (b) the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities or other ownership interest of a Person; provided , however , that if local law restricts foreign ownership, control shall be established by direct or indirect ownership of the maximum ownership percentage that may, under such local law, be owned by foreign interests. For purposes of this Agreement, the Operating Agreement and the Ancillary Agreements, the JV shall not be deemed to be an Affiliate of either Gilead or BMS.

1.7 "Agreement" shall have the meaning set forth in the first paragraph above.

1.8 "Alliance Manager" shall have the meaning set forth in Section 2.7(a).

1.9 "Allocated Costs" shall have the meaning set forth in Section 5.12.

1.10 "AMP" shall have the meaning set forth in Annex Q.

1.11 “Ancillary Agreements” shall mean, collectively, the BMS Supply Agreement, the Gilead Supply Agreement, the Services Agreement and the SDEA.

1.12 “ **[*]** ” shall have the meaning set forth in Section 5.1(f).

1.13 “Applicable EFV Territory” shall mean (a) with respect to any BMS Technology licensed to BMS by the EFV Licensor or licensed to the EFV Licensor by BMS, in each case under the EFV License Agreement, the EFV License Agreement Territory, and (b) with respect to all other BMS Technology, worldwide.

1.14 “Applicable Law” shall mean the applicable laws, rules, and regulations, including, without limitation, any rules, regulations, guidelines or other requirements of the Regulatory Authorities, that may be in effect from time to time in the Territory.

1.15 “Approvals” shall mean, collectively, the approvals granted by the Regulatory Authorities for the Manufacture, Marketing, sale and/or use of the Combination Product in the Field in the Territory, including, without limitation, pricing and reimbursement approvals (if any).

1.16 “Approved Marketing Materials” shall have the meaning set forth in Section 5.7(a).

1.17 “ **[*]** Representative” shall have the meaning set forth in Section 5.3(b).

1.18 “Authorized Commercialization Expenses” shall have the meaning set forth in Section 5.12.

1.19 “Authorized Development Expenses” shall have the meaning set forth in Section 3.8.

1.20 “Authorized Expenses” shall mean, collectively, the Authorized Commercialization Expenses, Authorized Development Expenses and Authorized Other Expenses.

1.21 “Authorized Other Expenses” shall mean all JV Expenses expressly stated in this Agreement or the Operating Agreement or any Ancillary Agreement to be Authorized Other Expenses or agreed by the JEC to be Authorized Other Expenses.

1.22 “AWP” shall have the meaning set forth in Annex Q.

1.23 “BMS” shall have the meaning set forth in the first paragraph of this Agreement.

1.24 “BMS Core Improvement” shall mean any Improvement pertaining specifically to BMS Core Technology, which Improvement is conceived, discovered, developed, or otherwise made, as necessary to establish authorship or inventorship under United States copyright or patent law, as the case may be, solely or jointly, by or on behalf of Gilead or its Affiliates or the JV in the course of, as a result of, or in connection with the Project Activities

conducted pursuant to the Development Plan or in connection with Co-Funded Clinical Trials; provided , however , that BMS Core Improvements shall not include any Dual Improvements.

1.25 "BMS Core Technology" shall mean all BMS proprietary technologies relating specifically to the Exploitation of EFV.

1.26 "BMS Guarantee Agreement" shall mean the guarantee agreement executed by BMS Parent in favor of Gilead and the JV, dated as of the Effective Date, as such agreement may be amended from time to time.

1.27 "BMS Indemnified Party" shall mean BMS Sub, BMS Parent and any of their Affiliates, officers, directors and employees.

1.28 "BMS Inventions" shall mean any Information and Inventions (whether or not patentable; and Improvements thereto, including Gilead Core Improvements to the extent owned by BMS) conceived, discovered, developed or otherwise made, as necessary to establish authorship or inventorship under United States copyright or patent law, as the case may be, solely (or, in the case of Gilead Core Improvements, solely or jointly) by or on behalf of BMS or its Affiliates, in the course of, as a result of or in connection with the Project Activities conducted pursuant to the Development Plan or in connection with Co-Funded Clinical Trials, but excluding any Joint Inventions.

1.29 "BMS Know-How" shall mean any and all Information and Inventions under the Control of BMS or its Affiliates as of the Effective Date or at any time during the term of this Agreement that are necessary or reasonably useful for the Exploitation of the Combination Product and are not generally known, but excluding any and all (a) such Information and Inventions to the extent claimed by the BMS Patents and (b) Joint Know-How.

1.30 "BMS Licensed Trademarks" shall have the meaning set forth in Section 6.6(b).

1.31 "BMS Parent" shall have the meaning set forth in the first paragraph of this Agreement.

1.32 "BMS Patents" shall mean all of the Patents that BMS or its Affiliates Control as of the Effective Date or at any time during the term of this Agreement that would, in the absence of the license granted by BMS in Section 6.1(b) and assuming that the EFV active pharmaceutical ingredient therein was not purchased from BMS, be infringed by the Exploitation of the Combination Product by the JV in any country in the world. A list of the BMS Patents in the Territory as of the Effective Date is attached hereto as Annex D.

1.33 "BMS Regulatory Documentation" shall mean all Regulatory Documentation applicable to Sustiva (or EFV) but not Sustiva (or EFV) in co-formulation with Viread (or TDF), Emtriva (or FTC), or Truvada (or TDF and FTC), that is or was developed by or on behalf of BMS or any of its Affiliates or sublicensees prior to the Effective Date or during the term of this Agreement.

1.34 “BMS Sub” shall have the meaning set forth in the first paragraph of this Agreement.

1.35 “BMS Supply Agreement” shall mean the supply agreement entered into between BMS Sub and the JV concurrently with the execution and delivery of this Agreement, as such agreement may be amended from time to time.

1.36 “BMS Technology” shall mean, collectively, the BMS Know-How and the BMS Patents.

1.37 “BMS Transfer Price” shall have the meaning set forth in Section 7.1(a).

1.38 “Breaching Member Party” shall have the meaning set forth in Section 14.4(a).

1.39 “Business Day” shall mean a day that is not a Saturday, Sunday or day on which banking institutions in New York, New York or San Francisco, California are required by law to remain closed.

1.40 “ **[*]** Representative” shall have the meaning set forth in Section 5.3(b).

1.41 “Calendar Quarter” shall mean a period of three (3) consecutive calendar months ending on March 31, June 30, September 30 or December 31.

1.42 “Calendar Year” shall mean a period of twelve (12) consecutive calendar months commencing on January 1 and ending on December 31.

1.43 “Change of Control” shall mean, with respect to a Person, any of the following transactions with a Third Party (a “Third Party Acquirer”): (a) a merger or consolidation of such Person with the Third Party Acquirer which results in the holders of the voting securities of such Person outstanding immediately prior thereto (other than the Third Party Acquirer, its “affiliates” and “associates” (as such terms are used in the Exchange Act)) ceasing to represent at least fifty percent (50%) of the combined voting power of the surviving entity (or, if applicable, its parent company) immediately after such merger or consolidation; (b) the sale to the Third Party Acquirer of all or substantially all of the business of such Person to which this Agreement relates (whether by merger, consolidation, sale of stock, sale of assets or other similar transaction); or (c) the Third Party Acquirer (which shall not be any trustee or other fiduciary holding securities under an employee benefit plan of such Person, or any corporation owned directly or indirectly by the stockholders of such Person, in substantially the same proportion as their ownership of stock of such Person), together with any of the Third Party Acquirer’s “affiliates” or “associates”, as such terms are used in the Exchange Act, becoming the beneficial owner of fifty percent (50%) or more of the combined voting power of the outstanding securities of such Person or by contract or otherwise having the right to control the Board of Directors or equivalent governing body of such Person or the ability to cause the direction of management of such Person.

1.44 “Clinical Data” shall mean any and all data (together with the results of analysis thereof) derived or generated from any clinical trial of a pharmaceutical product or from

testing or analysis of subjects or samples from such a clinical trial (e.g. in vitro testing of tissue samples from subjects enrolled in such a clinical trial), in each case where such clinical trial involves either or both of (i) any Single Agent Product or Double Agent Product, whether alone or in combination with any other product, and (ii) the Combination Product, whether alone or in combination with any other product.

1.45 "Clinical Trial Registry" shall have the meaning set forth in Section 3.11(b).

1.46 "Clinical Trial Results Database" shall have the meaning set forth in Section 3.11(b).

1.47 "CMC Data" shall mean any and all information contained in, as well as data supporting, the "Chemistry, Manufacturing and Control" and facilities sections (or sections corresponding thereto) of an NDA, including, without limitation, any drug master files referenced in the NDA.

1.48 "Co-Funded Clinical Trial" shall have the meaning set forth in Section 3.2(b).

1.49 "Collaboration Principles" shall have the meaning set forth in Section 2.9.

1.50 "Combination Product" shall mean the fixed-dose co-formulated product developed pursuant to this Agreement containing, as its only active pharmaceutical ingredients per single daily dose, 300 mg TDF, 200 mg FTC and 600 mg EFV.

1.51 "Combination Product Regulatory Documentation" shall mean all Regulatory Documentation applicable to the Combination Product that is developed by or on behalf of any Party pursuant to, and during the term of, this Agreement, but excluding all BMS Regulatory Documentation and all Gilead Regulatory Documentation.

1.52 "Combination Product Trademarks" shall mean the trademark or trademarks selected by the JCC for the Combination Product, all packaging designs and other trade dress used in connection with the Combination Product, other Trademarks relating thereto and any registrations thereof or any pending applications relating thereto. For the avoidance of doubt, the following shall not be considered Combination Product Trademarks: (a) BMS Licensed Trademarks, (b) Gilead Licensed Trademarks and (c) the names, logos and other Trademarks of the Member Parties.

1.53 "Commercialization Activities" shall mean Marketing and other activities for the commercialization of the Combination Product including those set forth in the Commercialization Plan and any other of the following conducted for the Combination Product: execution of product positioning, preparation of promotional and marketing materials, market research and advertising activities, Promotion, advocacy, national accounts, government relations activities, pricing, reimbursement and patient assistance programs.

1.54 "Commercialization Budget" shall have the meaning set forth in Section 5.11(b). The initial Commercialization Budget is attached hereto as Annex C.

1.55 “Commercialization Budget Deadlock” shall have the meaning set forth in Section 2.10(d).

1.56 “Commercialization Plan” shall mean the plan for Marketing and otherwise commercializing the Combination Product as described in Section 5.11(b), as updated from time to time pursuant to Section 5.11(c). The initial Commercialization Plan is attached hereto as Annex C.

1.57 “Commercialization Plan Deadlock” shall have the meaning set forth in Section 2.10(d).

1.58 “Commercially Reasonable Efforts” shall mean, with respect to (a) the Development Activities that a Member Party is required to perform with respect to the Combination Product pursuant to the Development Plan, or (b) the Commercialization Activities that a Member Party is required to perform with respect to the Combination Product pursuant to the Commercialization Plan, as the case may be, the level of effort that would generally be used by a Member Party to conduct such development or commercialization activities in a manner consistent with the minimum level of expenditure contemplated for such activities by the Development Budget or Commercialization Budget, as the case may be, for a product or compound owned by it or to which it has rights, which is of comparable market potential, profit potential or strategic value to such Member Party and is at a similar stage in its development or product life, taking into account, without limitation, issues of safety and efficacy, product profile, the proprietary position, the then-current competitive environment for such product or compound (and any individual agent comprising part of such product or compound), the likely timing of the product’s or compound’s (and any such individual agent’s) entry into the market, the then-current market penetration, the return on investment potential of such product (and any individual agent comprising part of such product), the regulatory environment and status of the product (and any individual agent comprising part of such product), and other relevant scientific, technical and commercial factors, in each case as measured by the facts and circumstances at the time such efforts are due.

1.59 “Commercial Record Request” shall have the meaning set forth in Section 5.10(b).

1.60 “Competing Product” shall mean (a) in the case of Gilead as the assigning Member Party, a **[*]** , and (b) in the case of BMS as the assigning Member Party, a **[*]** .

1.61 “Confidential Information” shall have the meaning set forth in Section 12.3(a).

1.62 “Continuing Member Party” shall mean a Member Party as so designated pursuant to Section 14.5.

1.63 “Control” or “Controlled” shall mean, with respect to any item of Information and Inventions, Patents or other intellectual property rights, the right, whether by ownership, license or otherwise, to grant a license, sublicense or other right to or under such item, Patent or right as provided for in this Agreement without violating the terms of any agreement or other binding arrangement with any Third Party. For purposes of this Section 1.63,

the consent referred to in Section 6.12 shall be deemed to have been obtained as of the Effective Date.

1.64 "Core Technology" shall mean the BMS Core Technology or the Gilead Core Technology, as the case may be.

1.65 "Cost Allocation Proposal" shall have the meaning set forth in Section 5.12.

1.66 "Cost of Goods" shall have the meaning set forth in Annex J hereto.

1.67 "Court" shall have the meaning set forth in Section 15.15.

1.68 "Detail" shall mean an in-person presentation to a health care provider specializing in treatment of HIV infection or AIDS, and who has prescribing authority, by a sales representative who is fully equipped with knowledge of, and (subject to Section 5.7) Approved Marketing Materials and product labels and inserts with respect to, the Combination Product, in which the characteristics of the Combination Product are described by such sales representative in a fair and balanced manner consistent with the requirements of Applicable Law and of this Agreement, and in a manner that is customary in the industry for the purpose of promoting a prescription pharmaceutical product, but without regard to the position of the presentation within a call to the health care provider. For the avoidance of doubt, a promotional material drop or product reminder shall not constitute a Detail. When used as a verb, to "Detail" shall mean to engage in a Detail.

1.69 "Detail Equivalent Amount" shall mean, for the 2005 Calendar Year and the 2006 Calendar Year, **[*]** , and for each successive Calendar Year thereafter, such amount as adjusted by the **[*]** for each such Calendar Year.

1.70 "Developing World" shall mean the territory comprising the countries listed in Annex R and any additional countries outside the Territory, Canada and Europe that Gilead includes in its Gilead Access Program, as indicated at the website for the program, www.gileadaccess.org.

1.71 "Development Activities" shall mean the activities set forth in the Development Plan, as updated from time to time pursuant to Section 3.7 and, only with respect to periods prior to the Effective Date, activities pursuant to the MTTA.

1.72 "Development Budget" shall mean the budget with respect to any expenses relating to Development Activities for the Combination Product that are chargeable to the JV, as updated from time to time pursuant to Section 3.7. The initial Development Budget is attached hereto as Annex B.

1.73 "Development Plan" shall mean the plan for the regulatory, clinical, formulation, Manufacturing Process and CMC Data development activities to be conducted for the Combination Product, including any Phase IV clinical studies and medical information and medical education programs, as updated from time to time pursuant to Section 3.7. The initial Development Plan is attached hereto as Annex B.

1.74 “Development Record Request” shall have the meaning set forth in Section 3.6(b).

1.75 “Disclosing Party” shall have the meaning set forth in Section 12.1.

1.76 “ **[*]** ” shall have the meaning set forth in Annex Q.

1.77 “Double Agent Product” shall mean Truvada, the co-formulated product developed by Gilead containing, as its only active pharmaceutical ingredients, TDF and FTC.

1.78 “Dual Improvement” shall mean an Improvement that constitutes both an Improvement pertaining specifically to the Gilead Core Technology and an Improvement pertaining specifically to the BMS Core Technology, which Improvement is conceived, discovered, developed, or otherwise made, as necessary to establish authorship or inventorship under United States copyright or patent law, as the case may be, solely or jointly, by or on behalf of BMS or its Affiliates, Gilead or its Affiliates, the JV or jointly any combination of them, in the course of, as a result of, or in connection with the Project Activities conducted pursuant to the Development Plan or in connection with Co-Funded Clinical Trials. Any Dual Improvement shall constitute a Joint Invention.

1.79 “Effective Date” shall have the meaning set forth in the first paragraph of this Agreement.

1.80 “EFV” shall have the meaning set forth in the recitals to this Agreement.

1.81 “EFV License Agreement” shall mean that certain license agreement, dated as of September 1, 1994, as amended, between the EFV Licensor and E.R. Squibb & Sons, L.L.C., as successor in interest to DuPont Pharmaceuticals Company (formerly named The DuPont Merck Pharmaceutical Company).

1.82 “EFV License Agreement Territory” shall mean BMS’ territory under the EFV License Agreement, which, as of the Effective Date, consists of the United States (including its territories and possessions), Canada, France (continental area), Germany, Italy, Spain, United Kingdom and the Republic of Ireland, provided , however , that (a) should the EFV License Agreement be amended to expand BMS’ territory, then EFV License Agreement Territory shall forthwith mean BMS’ territory as so expanded; and (b) should the EFV License Agreement be terminated as a result of BMS’ acquisition of all the rights of the EFV Licensor thereunder, then EFV License Agreement Territory shall forthwith mean all countries in the world.

1.83 “EFV Licensor” shall mean, collectively, Merck & Co., Inc., a New Jersey corporation, and Merck and Company Incorporated, a Delaware corporation, and their respective successors in interest.

1.84 “Estimated Net Selling Price” shall have the meaning set forth in Section 7.1(c)(ii).

1.85 “Exchange Act” shall have the meaning set forth in Section 15.12(b).

1.86 “Exploitation” shall mean the making, having made, importation, use, sale, offering for sale or disposition of a product or process, including, without limitation, the research, development, registration, modification, enhancement, Improvement, Manufacturing, storage, formulation, optimization, import, export, transport, distribution, promotion or Marketing of a product or process. When used as a verb, “Exploit” shall mean to engage in any of the foregoing activities.

1.87 “Europe” shall mean all countries comprising the European Union as it may be constituted from time to time.

1.88 “FDA” shall mean the United States Food and Drug Administration and any successor agency thereto.

1.89 “Field” shall mean the treatment of HIV infection in adult humans.

1.90 “Field Force” shall mean sales representatives, and regional or other subnational managers of the foregoing.

1.91 “Final Invoice Date” shall have the meaning set forth in Section 7.3(a).

1.92 “Finished Product Manufacturing Data” shall mean any and all data and information necessary or useful for the Manufacture of a finished product, packaged and labeled, from the active pharmaceutical ingredients thereof, in tablet, capsule or other form (but expressly excluding the Manufacture of such active pharmaceutical ingredients), that is not included in any CMC Data for such finished product.

1.93 “ **[*]** Customers” shall have the meaning set forth in Annex Q.

1.94 “FTC” shall have the meaning set forth in the recitals to this Agreement.

1.95 “GAAP” shall mean United States generally accepted accounting principles as in effect from time to time, as consistently applied.

1.96 “Generic Version” shall mean, with respect to the Combination Product or a Single Agent Product or Double Agent Product, a product containing the same active pharmaceutical ingredients as the Combination Product or the Single Agent Product or Double Agent Product, as the case may be, with those being the only active pharmaceutical ingredients in such product, and which product is approved in the United States under an Abbreviated New Drug Application (i.e., an ANDA).

1.97 “Generic Version Launch” shall have the meaning set forth in Section 14.5.

1.98 “Gilead” shall have the meaning set forth in the first paragraph of this Agreement.

1.99 “Gilead Core Improvement” shall mean any Improvement pertaining specifically to Gilead Core Technology, which Improvement is conceived, discovered,

developed, or otherwise made, as necessary to establish authorship or inventorship under United States copyright or patent law, as the case may be, solely or jointly, by or on behalf of BMS or its Affiliates or the JV in the course of, as a result of, or in connection with the Project Activities conducted pursuant to the Development Plan or in connection with Co-Funded Clinical Trials; provided , however , that Gilead Core Improvements shall not include any Dual Improvements.

1.100 "Gilead Core Technology" shall mean all Gilead proprietary technologies relating specifically to the Exploitation of FTC, TDF, or any combination of FTC and TDF (including, without limitation, the Double Agent Product, but excluding the Combination Product).

1.101 "Gilead Guarantee Agreement" shall mean the guarantee agreement executed by Gilead Parent in favor of BMS and the JV, dated as of the Effective Date, as such agreement may be amended from time to time.

1.102 "Gilead Indemnified Party" shall mean Gilead Sub, Gilead Parent and any of their Affiliates, officers, directors and employees.

1.103 "Gilead Inventions" shall mean any Information and Inventions (whether or not patentable; and Improvements thereto, including BMS Core Improvements to the extent owned by Gilead) conceived, discovered, developed or otherwise made, as necessary to establish authorship or inventorship under United States copyright or patent law, as the case may be, solely (or, in the case of BMS Core Improvements, solely or jointly) by or on behalf of Gilead or its Affiliates, in the course of, as a result of or in connection with the Project Activities conducted pursuant to the Development Plan or in connection with Co-Funded Clinical Trials, but excluding any Joint Inventions.

1.104 "Gilead Know-How" shall mean any and all Information and Inventions under the Control of Gilead or its Affiliates as of the Effective Date or at any time during the term of this Agreement that are necessary or reasonably useful for the Exploitation of the Combination Product and are not generally known, but excluding any and all (a) such Information and Inventions to the extent claimed by the Gilead Patents and (b) Joint Know-How.

1.105 "Gilead Licensed Trademarks" shall have the meaning set forth in Section 6.6(a).

1.106 "Gilead Parent" shall have the meaning set forth in the first paragraph of this Agreement.

1.107 "Gilead Patents" shall mean all of the Patents that Gilead or its Affiliates Control as of the Effective Date or at any time during the term of this Agreement that would, in the absence of the license granted by Gilead in Section 6.1(a) and assuming that the TDF and FTC active pharmaceutical ingredients therein were not purchased from Gilead, be infringed by the Exploitation of the Combination Product by the JV in any country in the world. A list of the Gilead Patents in the Territory as of the Effective Date is attached hereto as Annex E.

1.108 "Gilead Regulatory Documentation" shall mean all Regulatory Documentation applicable to Viread (or TDF), Emtriva (or FTC), or Truvada (or TDF in co-

formulation with FTC) but not Viread (or TDF), Emtriva (or FTC) or Truvada (or TDF and FTC) in co-formulation with Sustiva (or EFV), that is or was developed by or on behalf of Gilead or any of its Affiliates or sublicensees prior to the Effective Date or during the term of this Agreement.

1.109 "Gilead Sub" shall have the meaning set forth in the first paragraph of this Agreement.

1.110 "Gilead Supply Agreement" shall mean the supply agreement entered into between Gilead Parent and the JV concurrently with the execution and delivery of this Agreement, as such agreement may be amended from time to time.

1.111 "Gilead Technology" shall mean, collectively, the Gilead Know-How and the Gilead Patents.

1.112 "Gilead Transfer Price" shall have the meaning set forth in Section 7.1(a).

1.113 " **[*]** " shall have the meaning set forth in **[*]** .

1.114 " **[*]** " shall have the meaning set forth in Section 5.3(d).

1.115 "Good Clinical Practice" or "GCP" shall mean the then-current standards for clinical trials for pharmaceutical products, as set forth in the Act and applicable regulations promulgated thereunder, as the same may be amended from time to time.

1.116 "Good Laboratory Practice" or "GLP" shall mean the then-current standards for laboratory activities for pharmaceutical products, as set forth in the Act and applicable regulations promulgated thereunder, as the same may be amended from time to time.

1.117 "Good Manufacturing Practice" or "GMP" shall mean the regulatory requirements for current good manufacturing practices for pharmaceutical products promulgated by the FDA, including as set forth in U.S. Food, Drug and Cosmetic Act, 21 C.F.R. (parts 210, 211, 600 and 610), as the same may be amended from time to time.

1.118 "Improvement" shall mean any modification to a compound, composition, product or technology or to any discovery, device, process or formulation related to such compound, composition, product or technology, whether or not patented or patentable, including, without limitation, any enhancement in the efficiency, operation, Manufacture, ingredients, preparation, presentation, formulation, means of delivery, packaging or dosage of a compound, composition, product or technology, or of any discovery, device, process or formulation related thereto; any discovery or development of any new or expanded indications or applications for a compound, composition, product or technology; any discovery or development that improves the stability, safety or efficacy of a compound, composition, product or technology; or any discovery or development of a new dosage regimen for a product or method of use or administration for a compound, composition, product or technology.

1.119 "IND" shall mean an Investigational New Drug Application to be filed with the FDA in accordance with Applicable Law.

1.120 “Indemnified Party” shall mean a Person seeking indemnification for Losses pursuant to Section 13.8.

1.121 “Indemnifying Member Party” shall have the meaning set forth in Section 13.6.

1.122 “Indemnifying Party” shall mean a Party from which indemnification is sought pursuant to Section 13.8.

1.123 “Independent Accounting Expert” shall have the meaning set forth in Section 7.1(d).

1.124 “Information and Inventions” shall mean all technical, scientific and other know-how and information, trade secrets, knowledge, technology, means, methods, processes, practices, formulas, instructions, skills, techniques, procedures, experiences, ideas, technical assistance, designs, drawings, assembly procedures, computer programs, apparatuses, specifications, data, results and other material, including, without limitation, pre-clinical and clinical trial results, Manufacturing procedures, test procedures, and purification and isolation techniques, (whether or not confidential, proprietary, patented or patentable) in written, electronic or any other form now known or hereafter developed, and all Improvements, whether to the foregoing or otherwise, and all other discoveries, developments, inventions (whether or not confidential, proprietary, patented or patentable), and tangible embodiments of any of the foregoing.

1.125 “Infringement” shall have the meaning set forth in Section 11.3(a).

1.126 “Infringing Combination Product” shall have the meaning set forth in Section 11.3(a).

1.127 “Initial Launch Period” shall mean the first **[*]** commencing with the Launch of the Combination Product in the Territory.

1.128 “Initiating Member” shall have the meaning set forth in Section 7.1(e).

1.129 “Interim BMS Unit Transfer Price” shall have the meaning set forth in Section 7.1(a).

1.130 “Interim Gilead Unit Transfer Price” shall have the meaning set forth in Section 7.1(a).

1.131 “Interim Unit Transfer Price” shall mean, for each Calendar Year, with respect to BMS, the Interim BMS Unit Transfer Price and with respect to Gilead, the Interim Gilead Unit Transfer Price.

1.132 “Joint Commercialization Committee” or “JCC” shall have the meaning set forth in Section 2.4(a).

1.133 “Joint Development Committee” or “JDC” shall have the meaning set forth in Section 2.3(a).

1.134 “Joint Executive Committee” or “JEC” shall have the meaning set forth in Section 6.1 of the Operating Agreement.

1.135 “Joint Finance Committee” or “JFC” shall have the meaning set forth in Section 2.5(a).

1.136 “Joint Inventions” shall mean (a) any and all Information and Inventions pertaining specifically to the Combination Product (whether or not patentable; and Improvements thereto) conceived, discovered, developed or otherwise made, as necessary to establish authorship or inventorship under United States copyright or patent law, as the case may be, by or on behalf of BMS or its Affiliates, Gilead or its Affiliates, the JV, or jointly any combination of them, in the course of, as a result of or in connection with the Project Activities conducted pursuant to the Development Plan or in connection with Co-Funded Clinical Trials; and (b) any Dual Improvement.

1.137 “Joint Know-How” means all Information and Inventions included in the Joint Inventions that are not generally known, but excluding any Information and Inventions to the extent claimed by the Joint Patents. For the avoidance of doubt, “Joint Know-How” shall include all Clinical Data from the proposed bioequivalence study contemplated by the Development Plan.

1.138 “Joint Patents” shall mean any Patents to the extent that such Patents claim Joint Inventions.

1.139 “Joint Technology” shall mean, collectively, the Joint Know-How and the Joint Patents.

1.140 “JV” shall have the meaning set forth in the first paragraph of this Agreement.

1.141 “JV Expenses” shall mean all direct, out-of-pocket expenses that Gilead or BMS may incur (or cause their Affiliates to incur) in performing the Project Activities on behalf of the JV. For the avoidance of doubt, with respect to any JV Expenses incurred by a Member Party (or its Affiliates), such expenses are chargeable to the JV by such Member Party only if such expenses constitute Authorized Expenses.

1.142 “Key Regulatory Submissions” shall have the meaning set forth in Section 3.4(a).

1.143 “Launch” shall mean, with respect to the Territory, either (a) the date on which the Combination Product is first shipped by or on behalf of the JV for commercial sale to Third Parties or (b) for any Generic Version product referred to in Section 14.5, the date on which it is first available for commercial sale and purchase, as the case may be.

1.144 “Losses” shall mean judgments, fines, amounts paid in settlement, and out-of-pocket expenses (including reasonable attorneys’ fees) reasonably incurred by a Party (or other indemnitee as provided in Section 13) in a Proceeding.

1.145 “ **[*]** ” shall have the meaning set forth in Annex Q.

1.146 “Manufacture” or “Manufacturing” means, with respect to a product or compound, the manufacturing, processing, formulating, packaging, labeling, holding, and quality control testing of such product or compound.

1.147 “Manufacturing Process” shall mean any process or step thereof that is necessary or useful for Manufacturing the Combination Product from bulk active pharmaceutical ingredients, any Improvements thereto or any intermediate of the foregoing.

1.148 “Market” or “Marketing” shall mean all programs and activities relating to the Promotion and sale and other commercialization of the Combination Product in the Territory, including, without limitation, Detailing and advertising, as well as selling, contracting for sale of, and distributing the Combination Product.

1.149 “Material Default” shall have the meaning set forth in Section 14.4(a).

1.150 “Member Parties” shall mean, collectively, Gilead and BMS.

1.151 “Members” shall mean, collectively, Gilead Sub and BMS Sub.

1.152 “Member Vote” shall have the meaning set forth in Section 2.6(f).

1.153 “ **[*]** ” shall have the meaning set forth in Section 5.1(f).

1.154 “ **[*]** ” shall have the meaning set forth in Section 5.1(f).

1.155 “MTTA” shall have the meaning set forth in Section 15.14.

1.156 “NDA” shall mean a New Drug Application to be filed with the FDA in accordance with Applicable Law for the purpose of obtaining marketing approval for a pharmaceutical product in the United States.

1.157 “ **[*]** ” shall have the meaning set forth in Annex Q.

1.158 “Net Sales” shall mean, with respect to a product for any period, the gross amount invoiced for commercial sales of that product in such period by or on behalf of the selling Party to Third Parties (provided that amounts invoiced for product sold or provided for use in the Developing World, if any, shall not be included), less deductions for: (a) normal and customary quantity and/or cash discounts and sales returns and allowances, including, without limitation, those granted on account of price adjustments, billing errors, rejected goods, damaged goods, returns, rebates, administrative or other fees or reimbursements or similar payments to wholesalers or other distributors (including without limitation pursuant to inventory management agreements), buying groups, AIDS Drug Assistance Programs, pharmacy benefit management

organizations, health care insurance carriers or other institutions, allowances, rebates, fees paid to distributors and chargebacks actually allowed or given; (b) freight, postage, shipping and insurance expenses (if separately identified in such invoice); (c) customs or excise duties or other duties related to the sales making up the gross invoice amount (if separately identified in such invoice); (d) any rebates or similar payments accrued with respect to sales paid for by any governmental or regulatory authority such as, by way of illustration and not in limitation of the foregoing in this clause (d), United States Federal or state Medicaid, Medicare or similar state program or any government imposed retroactive price reduction; and (e) sales and other taxes and duties directly related to the sale, to the extent that such items are included in the gross invoice price (but not including taxes assessed against the income derived from such sale). Any of the deductions listed above that involves a payment by such Party shall not be taken as a deduction prior to the date accrued in accordance with GAAP as consistently applied in such Party's audited financial statements. For purposes of determining Net Sales pursuant to Section 14.6(b)(ii), the Combination Product shall be deemed to be sold when invoiced.

For purposes of calculating Net Sales, sales between or among a Party and/or Affiliates shall be excluded from the computation of Net Sales, but sales by such Party and its Affiliates to Third Parties shall be included in the computation of Net Sales.

1.159 "Net Selling Price" shall mean the price of a pharmaceutical product as calculated in accordance with Annex I hereto.

1.160 "Non-Breaching Member Party" shall have the meaning set forth in Section 14.4(a).

1.161 "Operating Agreement" shall have the meaning set forth in the recitals to this Agreement.

1.162 "Operating Committees" shall mean, collectively, the JCC, the JDC and the JFC.

1.163 "Optional Update" shall have the meaning set forth in Section 5.7(d).

1.164 "Paragraph (iv) Certification" shall have the meaning set forth in Section 11.3(a).

1.165 "Party" and "Parties" shall have the meanings set forth in the first paragraph of this Agreement.

1.166 "Patents" shall mean (a) all patents and patent applications (including, without limitation, provisional applications), (b) any substitutions, divisions, continuations, continuations-in-part, reissues, renewals, registrations, confirmations, re-examinations, extensions, supplementary protection certificates and the like, and (c) any foreign or international equivalents of any of the foregoing.

1.167 "PCT" shall mean the Patent Cooperation Treaty, opened for signature June 19, 1970, 58 U.S.T. 7645.

1.168 “Permitted Assignee” shall have the meaning set forth in Section 15.4(a).

1.169 “Person” shall mean an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other similar entity or organization, including, without limitation, a government or political subdivision, department or agency of a government.

1.170 “Prescription Drug Marketing Act” or “PDMA” shall have the meaning set forth in Section 5.1(d).

1.171 “Pricing Committee” shall have the meaning set forth in Section 5.3(b).

1.172 “Pricing Information” shall have the meaning set forth in Section 5.3(h).

1.173 “Proceeding” shall mean a civil, criminal, administrative or investigative proceeding brought by or a demand made by a Third Party.

1.174 “Product Detail Period” shall have the meaning set forth in Section 5.1(e).

1.175 “Product EFV Yield” shall have the meaning set forth in Annex K.

1.176 “Product FTC Yield” shall have the meaning set forth in Annex K.

1.177 “Product TDF Yield” shall have the meaning set forth in Annex K.

1.178 “Project Activities” shall mean any and all activities undertaken or performed by or on behalf of any of the Parties, pursuant to this Agreement or the MTTA, in the course of, as a result of or in connection with the research, development, Marketing, sale or use of the Combination Product, including, without limitation, the Development Activities and the Commercialization Activities; provided , however , that Project Activities shall not include any activities undertaken or performed by or on behalf of either Member Party or its Affiliates or sublicensees to the extent that they arise in the course of, as a result of or in connection with the Exploitation of the Combination Product for use outside the Territory (including, without limitation, any activities undertaken or performed by Gilead in the exercise of its rights under the license granted in Section 6.2(d)).

1.179 “Promotion” shall mean the conduct of activities normally undertaken by a pharmaceutical company’s Field Force to implement plans and strategies for marketing and other commercialization aimed at encouraging the approved use of a pharmaceutical product, including but not limited to Detailing. When used as a verb, “Promote” shall mean to engage in any of the foregoing activities.

1.180 “PSUR” means a periodic safety update report required to be submitted to the FDA.

1.181 “Publication Standards” shall have the meaning set forth in Section 3.11(a).

1.182 " **[*]** " shall have the meaning set forth in Section 5.1(f).

1.183 "Recalculated Transfer Price" shall have the meaning set forth in Section 7.1(c)(iii).

1.184 "Receiving Party" shall have the meaning set forth in Section 12.1.

1.185 "Regulatory Authorities" shall mean any applicable supra-national, federal, national, regional, state, provincial or local regulatory agencies, departments, bureaus, commissions, councils or other government entities, including, without limitation, the FDA, or other entity exercising regulatory authority with respect to the Exploitation of the Combination Product in the Territory.

1.186 "Regulatory Documentation" shall mean all submissions to Regulatory Authorities in the Territory, including, without limitation, all INDs, NDAs, sNDAs, CMC Data, drug master files, correspondence with regulatory agencies (registrations and licenses, regulatory drug lists, advertising and promotion documents), PSURs, adverse event files, complaint files and manufacturing records.

1.187 "Relevant Experience Information" shall mean adverse experience reports, reports based on marketing data and other documentation of relevant drug experience.

1.188 "Requesting Member" shall have the meaning set forth in Section 5.3(g).

1.189 "Required Update" shall have the meaning set forth in Section 5.7(b).

1.190 "Respective Percentage" shall mean, with respect to Gilead, the Actual Gilead Percentage, and with respect to BMS, the Actual BMS Percentage; provided , however , that whenever this Agreement provides that an amount shall be allocated between the Member Parties based on their Respective Percentages, such allocation shall first be made on the basis of the Member Parties' respective Working Percentages at the time of the relevant event, which allocation shall then be adjusted, if applicable, after the determination of the Member Parties' respective Actual Percentages for the Calendar Year in which the relevant event occurs, which adjustments shall occur no later than April 1 of the next Calendar Year unless otherwise provided in this Agreement or the Operating Agreement, or otherwise agreed in writing by the Member Parties.

1.191 "Right of Reference" shall have the meaning set forth in 21 C.F.R. § 314.3(b) or alternatively shall mean equivalents thereto in jurisdictions outside the Territory. For the avoidance of doubt, as used in this Agreement "Right of Reference" shall refer to the right of Regulatory Authorities to rely upon and otherwise use the applicable information, but shall not confer on the Member Party to which such Right of Reference is granted any right to receive or access such information.

1.192 " **[*]** " shall have the meaning set forth in Section 5.3(a).

1.193 "SDEA" or "Safety Data Exchange Agreement" shall have the meaning set forth in Section 9.1.

1.194 “Selected Product Liability Claim” shall have the meaning set forth in Section 13.7(c).

1.195 “Services Agreement” shall mean the distribution services agreement to be entered into between Gilead Parent and the JV after the Effective Date, the key terms of which are outlined in Annex P hereto, as such agreement may be amended from time to time.

1.196 “Single Agent Product” shall mean each of Viread, Emtriva, and Sustiva.

1.197 “Study 934” shall mean the clinical study initiated by Gilead prior to the Effective Date under Gilead’s clinical study protocol entitled “A Phase 3, Randomized, Open-Label, Multicenter Study of the Treatment of Antiretroviral-Naïve, HIV-1-Infected Subjects comparing Tenofovir Disoproxil Fumarate and Emtricitabine in Combination with Efavirenz Versus Combivir® (lamivudine/zidovudine) and Efavirenz” (as such protocol may be revised and such study may be extended or expanded from time to time, in each case by Gilead). For the avoidance of doubt, the conduct of Study 934 shall not be deemed a Development Activity or Project Activity for purposes of this Agreement, and Clinical Data derived or generated from Study 934 or from testing or analysis of subjects or samples from Study 934 shall be Gilead Know-How, not Joint Know-How.

1.198 “Subsequent Launch Period” shall mean the **[*]** after the Launch of the Combination Product in the Territory.

1.199 “Supplier” shall mean each Person selected as a commercial supplier of the Combination Product pursuant to Section 4.2(a).

1.200 “Supply Agreements” shall mean, collectively, the BMS Supply Agreement and the Gilead Supply Agreement.

1.201 “Supply Party” shall mean, with respect to any Supplier, (a) if a Member Party is the Supplier, such Member Party, or (b) if a Third Party is the Supplier, the Member Party that is designated pursuant to Section 4.2(a) to manage the relationship with such Supplier.

1.202 “TDF” shall have the meaning set forth in the recitals to this Agreement.

1.203 “Technology” shall mean the BMS Technology or the Gilead Technology, as the case may be.

1.204 “Terminated Member Party” shall mean a Member Party as so designated pursuant to Section 14.5.

1.205 “Territory” shall mean the United States, the Commonwealth of Puerto Rico and any other territories and possessions of the United States.

1.206 “Third Party” shall mean any Person other than Gilead, BMS, the JV and their respective Affiliates.

1.207 “Third Party Acquirer” shall have the meaning set forth in Section 1.43.

1.208 "Trademark" shall include any word, name, symbol, color, designation or device or any combination thereof, including, without limitation, any trademark, trade dress, service mark, service name, brand mark, trade name, brand name, logo or business symbol.

1.209 "Transfer Price" shall mean the BMS Transfer Price or the Gilead Transfer Price, as the case may be.

1.210 "Transferring Member Party" shall have the meaning set forth in Section 15.4(b).

1.211 " **[*]** " shall have the meaning set forth in Section 5.3(d).

1.212 "WAC" shall have the meaning set forth in Annex Q.

1.213 "Working BMS Percentage" shall mean, for each Calendar Year, the preliminary percentage applicable to BMS for such Calendar Year determined pursuant to Section 7.1(c)(i).

1.214 "Working Gilead Percentage" shall mean, for each Calendar Year, the preliminary percentage applicable to Gilead for such Calendar Year determined pursuant to Section 7.1(c)(i).

1.215 "Working Percentage" shall mean, with respect to BMS, the Working BMS Percentage and, with respect to Gilead, the Working Gilead Percentage.

SECTION 2 .
COLLABORATION MANAGEMENT

2.1 General . As set forth in this Agreement and in the Operating Agreement, the Member Parties desire to establish a Joint Executive Committee which shall oversee the Member Parties' collaboration under this Agreement and facilitate communications between the Member Parties with respect to the development, Approval, Manufacturing and commercialization of the Combination Product in the Territory. Subject to the foregoing, the Member Parties also desire to establish specialized committees to focus more closely on the Parties' Development Activities, Commercialization Activities and finance activities hereunder. Each such committee shall have only the responsibilities and authority delegated to or vested in such committee in this Section 2 or elsewhere in this Agreement and the Operating Agreement.

2.2 Role of the Joint Executive Committee . The establishment, composition, governance, powers and limitations on powers of the Joint Executive Committee (or "JEC") are governed by Section 6 of the Operating Agreement and by this Section 2.2. The initial JEC members are identified in Annex A hereto. The JEC shall have overall authority and responsibility with respect to the Development Activities and Commercialization Activities for the Combination Product (except for those matters reserved to the Member Parties pursuant to this Agreement or the Operating Agreement). Without limitation of the foregoing, the JEC shall have the following powers and duties:

(i) to oversee the work of the Operating Committees and, if possible, resolve disputes referred to it by the Alliance Managers pursuant to Section 2.8;

(ii) to oversee the activities of Gilead in keeping the JV's books and records pursuant to Section 8.1;

(iii) to adopt guidelines for compliance by the Parties with antitrust laws in connection with the JV activities;

(iv) to approve the initial Capital Contributions (as defined in the Operating Agreement) of the Members, to approve each Capital Contribution planning schedule, and to issue certain requests for additional Capital Contributions, in each case pursuant to Section 4.1 of the Operating Agreement;

(v) to approve (x) each annual update of the Development Plan and the Development Budget and (y) any interim update of the Development Plan or Development Budget, as the case may be, as to which the JDC is unable to reach agreement;

(vi) to approve (x) each annual update of the Commercialization Plan and the Commercialization Budget and (y) any interim update of the Commercialization Plan or Commercialization Budget, as the case may be, as to which the JCC is unable to reach agreement;

(vii) to approve unit volume forecasts as to which the JCC is unable to reach agreement for use in preparation of Commercialization Plans and Commercialization Budgets and (regardless of whether there is a Commercialization Plan or Commercialization Budget) for use in planning for Manufacture of the Combination Product, planning for Commercialization Activities and for the Member Parties' own financial planning purposes;

(viii) to approve Cost Allocation Proposals;

(ix) to approve the JFC's reports on financial matters that the JEC determines to be reasonably necessary or appropriate for the implementation of the financial aspects of the JV;

(x) to review recommendations of the JFC with respect to, and approve, one or more means of reconciling, one to the other, the internal reporting and accounting standards of each of the Member Parties where reasonably necessary, and methods of charging costs and expenses of each of the Member Parties;

(xi) to review and, if applicable, recommend to the Member Parties changes to the **[*]** pursuant to Section 5.3(i);

(xii) to resolve disputes within the JDC with respect to (A) any required approval of publications or presentations pursuant to Section 3.11(a), and (B) a Member Party's obligation under Section 3.6(b), if any, to provide the other Member Party with access to certain of such Member Party's records, documentation and data;

(xiii) to resolve disputes within the JCC with respect to (A) the initially proposed marketing materials for the Combination Product for the Territory, and thereafter, updates of any Approved Marketing Materials, (B) a Member Party's obligation, if any, pursuant to Section 5.10 to provide the other Member Party with access to certain of such Member Party's records, documentation and data, (C) issues relating to the patient assistance programs arising under Section 2.4(b)(vii) and (D) issues relating to Suppliers and alternate suppliers arising under Section 2.4(b)(ix);

(xiv) to decide major strategic issues and any other matters relating to the JV that are not (i) within the purview of the Operating Committees or (ii) reserved to the Member Parties pursuant to this Agreement or the Operating Agreement; and

(xv) to take such other actions as are reserved to the JEC in this Agreement or the Operating Agreement or as the Parties may mutually agree in writing, except that the JEC may not amend or take any action that would conflict with any provision of this Agreement, the Operating Agreement or any Ancillary Agreement and may not resolve any issue regarding termination of this Agreement for a potential or actual Material Default.

2.3 Joint Development Committee .

(a) Each Member shall appoint four (4) members of a joint development oversight and management committee (the "Joint Development Committee" or "JDC"). Gilead Sub shall appoint one (1) of the members designated by Gilead Sub, to serve as chairperson of the JDC through the first anniversary of the Effective Date. Thereafter a member designated by BMS Sub and then a member designated by Gilead Sub shall serve alternately as chairperson, on a rotating annual basis from each anniversary of the Effective Date. The initial JDC members and the chairperson are identified in Annex A hereto.

(b) Subject to the oversight of the JEC, the JDC shall have the following powers and duties:

(i) to (x) review and propose to the JEC for its approval each annual update of the Development Plan and Development Budget and (y) review and approve each interim update of the Development Plan and Development Budget, in each case proposed pursuant to Section 3.7;

(ii) to oversee and coordinate the Parties' activities under the Development Plan;

(iii) to oversee and manage matters relating to clinical supply of the Combination Product, including, without limitation, Manufacturing requirements, inventory projections and inventory control;

(iv) with the Alliance Managers, (x) to assist in coordinating scientific interactions between the Parties during the course of implementing the Development Plan and (y) to facilitate the exchange among the Parties of data, information, materials and results relating to clinical manufacturing, clinical trials, and communications and filings with Regulatory Authorities for the Combination Product (in each case solely to the extent that such

data, information and materials are required to be exchanged among the Parties, or with respect to which one Member Party has the right to gain access from the other Member Party or the JV, pursuant to this Agreement or the Operating Agreement);

(v) to oversee regulatory matters for the JV, including, without limitation, approving all Combination Product Regulatory Documentation to the extent required pursuant to Section 3.4, overseeing Gilead's activities as the JV's liaison with Regulatory Authorities in the Territory, and overseeing the activities conducted pursuant to the SDEA and other pharmacovigilance and safety reporting;

(vi) to oversee the Member Parties' activities pursuant to their respective Supply Agreements and to oversee and coordinate with the JCC with respect to matters relating to the monitoring of Manufacturing capacity, forecasts and orders for the active pharmaceutical ingredients of the Combination Product;

(vii) to resolve disputes between the Member Parties with respect to (A) any required approval of publications or presentations pursuant to Section 3.11(a), and (B) a Member Party's obligation under Section 3.6(b), if any, to provide the other Member Party with access to certain of such Member Party's records, documentation and data;

(viii) to oversee medical affairs and medical communications activities;

(ix) to review and approve or reject proposals for Phase IV clinical studies of the Combination Product;

(x) to provide updates on the JDC's activities and achievements to the JEC each Calendar Quarter; and

(xi) to perform such other functions as the Member Parties may mutually agree in writing from time to time.

2.4 Joint Commercialization Committee .

(a) Each Member shall appoint four (4) members of a joint commercialization oversight and management committee (the "Joint Commercialization Committee" or "JCC"). BMS Sub shall appoint one (1) of the members designated by BMS Sub, to serve as chairperson of the JCC through the first anniversary of the Effective Date. Thereafter a member designated by Gilead Sub and then a member designated by BMS Sub shall serve alternately as chairperson, on a rotating annual basis from each anniversary of the Effective Date. The initial JCC members and the chairperson are identified in Annex A hereto.

(b) Subject to the oversight of the JEC, the JCC shall have the following powers and duties:

(i) to oversee and coordinate the Parties activities under the Commercialization Plan;

(ii) to (x) review and propose to the JEC for its approval each annual update of the Commercialization Plan and Commercialization Budget and (y) review and approve each interim update of the Commercialization Plan and Commercialization Budget, in each case proposed pursuant to Section 5.11(c);

(iii) to oversee Gilead's activities pursuant to the Services Agreement;

(iv) to develop and approve (x) initial marketing materials for the Combination Product for the Territory, and (y) updates to such materials from time to time as may be reasonably necessary or appropriate, all in accordance with Section 5.7;

(v) to develop and approve unit volume forecasts for use in preparation of Commercialization Plans and Commercialization Budgets and (regardless of whether there is a Commercialization Plan or Commercialization Budget) for use in planning for Manufacture of the Combination Product, planning for Commercialization Activities and for the Member Parties' own financial planning purposes;

(vi) to coordinate with the JDC with respect to Manufacturing and labeling matters;

(vii) to (x) determine how the JV will respond to requests from health care providers or from individual patients who have or may obtain prescriptions for the Combination Product but are unable to afford it, and (y) to establish the appropriate procedures and response times that shall apply in responding to such requests, in each case ((x) and (y)) in accordance with Section 5.2(a);

(viii) to make recommendations to the JEC with respect to Cost Allocation Proposals;

(ix) to maintain one Supplier and one or more alternate suppliers pursuant to Section 4.2(a) for Manufacture of commercial supplies of the Combination Product;

(x) oversee and coordinate with the JDC with respect to matters relating to the Manufacturing and labeling of the Combination Product for commercial supply, including, in the case of Manufacturing, with respect to quality control matters, and the monitoring of Manufacturing capacity, forecasts and orders for the Combination Product to ensure adequate commercial supply to meet the demand therefor in the Territory as projected by the JCC and approved by the JEC;

(xi) to resolve disputes between the Member Parties with respect to a Member Party's obligation, if any, pursuant to Section 5.10 to provide the other Member Party with access to certain of such Member Party's records, documentation and data;

(xii) to provide updates on the JCC's activities and achievements to the JEC each Calendar Quarter; and

(xiii) to perform such other functions as the Member Parties may mutually agree in writing from time to time.

2.5 Joint Finance Committee .

(a) Each Member shall appoint two (2) members of a joint finance committee to support the JEC, the JDC and the JCC (the "Joint Finance Committee" or "JFC"). Gilead Sub shall appoint one (1) of the members designated by Gilead Sub, to serve as chairperson of the JFC through the first anniversary of the Effective Date. Thereafter a member designated by BMS Sub and then a member designated by Gilead Sub shall serve alternately as chairperson, on a rotating annual basis from each anniversary of the Effective Date. The initial JFC members and the chairperson are identified in Annex A hereto.

(b) Subject to the oversight of the JEC, the JFC shall have the following powers and duties:

(i) to work with the JEC and the other Operating Committees to assist in financial, budgeting and planning matters as required, including assisting in the preparation of budgets and annual and long-term plans;

(ii) to recommend, for approval by the JEC, procedures, formats and timelines consistent with this Agreement for reporting financial data as well as additional or alternative reporting procedures concerning financial aspects of the JV;

(iii) to prepare such reports on financial matters as are approved by the JEC for the implementation of the financial aspects of the JV;

(iv) to coordinate audits of financial data where appropriate and required or allowed by this Agreement;

(v) to address issues of implementation relating to the financial mechanics and calculations under this Agreement and the Operating Agreement;

(vi) to recommend, for approval by the JEC, a means of reconciling, one to the other, the internal reporting and accounting standards of each of the Member Parties where necessary and methods of charging costs and expenses of each of the Member Parties;

(vii) to review the appropriate allocation of costs and expenses with respect to Authorized Expenses;

(viii) to calculate or cause to be calculated, as the case may be, those matters expressly required to be calculated (or caused to be calculated) by the JFC pursuant to this Agreement, including Sections 7.1(c) and 7.1(d), and pursuant to the Operating Agreement, and to address issues of implementation relating to the cash netting procedures set forth in Section 4.1(c) of the Operating Agreement;

(ix) to develop and recommend to the JEC for approval the initial Capital Contributions (as defined in the Operating Agreement) of the Members and each Capital Contribution planning schedule, and to recommend to the JEC certain requests for additional Capital Contributions, in each case pursuant to Section 4.1 of the Operating Agreement;

(x) to provide updates on the JFC's activities and achievements to the JEC each Calendar Quarter; and

(xi) to perform such other functions as the Member Parties may mutually agree in writing from time to time.

2.6 Procedural Rules of the Operating Committees .

(a) Each of BMS Sub and Gilead Sub shall designate representatives with appropriate expertise to serve as members of each Operating Committee, and each representative may serve on more than one (1) Operating Committee (and/or the JEC) as appropriate in view of the individual's expertise. The Members shall endeavor to match their respective representation on each Operating Committee, in terms of functional areas and management level.

(b) A member of an Operating Committee may be removed or replaced at any time, with or without cause, by the Member that appointed such committee member. Such action shall be accomplished by written notice to the other Member. Each member of an Operating Committee shall serve until a successor is named by the Member that appointed such committee member (or until his or her earlier resignation or removal).

(c) The JFC shall meet at least one (1) time per Calendar Quarter during the term of this Agreement. The JDC shall meet at least one (1) time per Calendar Quarter until the first anniversary of the Launch of the Combination Product, and thereafter at least semiannually (or on such other schedule as may be determined by the JDC). The JCC shall meet at least one (1) time per Calendar Quarter until the second anniversary of the Launch of the Combination Product, and thereafter at least semiannually (or on such other schedule as may be determined by the JCC). Each Operating Committee shall meet at times and places in the United States mutually agreed by BMS Sub and Gilead Sub. The respective Operating Committees shall meet to discuss the overall progress of the Development Activities in the Development Plan or Commercialization Activities in the Commercialization Plan, or the financial aspects of the JV, as the case may be, and any problems arising in the course of such activities; the status of the Development Plan and Development Budget, the Commercialization Plan and Commercialization Budget, or other financial aspects of the JV, as the case may be; and any other matter that a member of such Operating Committee may reasonably request. Each Operating Committee shall keep accurate and complete minutes of its meetings to record all proposals, recommendations and actions taken. All such minutes and other records of each Operating Committee shall be available to each Member Party.

(d) The chairperson shall organize committee meetings, prepare the meeting agenda based on items submitted by committee members, take or cause to be taken

accurate minutes of meetings, circulate draft minutes within seven (7) days after the meeting for approval by the other Member's committee members, and circulate final minutes to the committee members promptly following such approval. Notice of, and the agenda for, each meeting (and any accompanying materials) shall be circulated to the members of the applicable Operating Committee sufficiently in advance so that in the normal course such materials will be received at least five (5) Business Days in advance of such meeting; provided , however , that under reasonable circumstances such materials may be circulated within a lesser period of time in advance of the meeting, so long as each Member agrees to the inclusion on such agenda of any items proposed for consideration by the other Member. Any member of an Operating Committee may waive notice of a meeting thereof, and shall be deemed to waive such notice (but not, if applicable, his or her right to object to the inclusion of a particular agenda item or items as set forth in the proviso to the previous sentence) if he or she attends the meeting and does not object to the meeting because of a lack of notice prior to its commencement .

(e) At least two (2) members appointed by Gilead Sub and two (2) members appointed by BMS Sub must be in attendance at a meeting of an Operating Committee to establish a quorum for the conduct of business. Committee members may attend meetings in person or, as long as each attendee is able to hear the others, by telephone or by video conference equipment; provided , however , that at least two (2) meetings per Calendar Year of each Operating Committee shall be held in person until the Launch of the Combination Product, and thereafter at least one (1) meeting per Calendar Year of each Operating Committee shall be held in person. Each Operating Committee may also act by unanimous written consent of its members without a meeting.

(f) At each meeting of an Operating Committee, each Member's designees on such Operating Committee shall, collectively, have one (1) vote on all matters to be acted upon (the "Member Vote"). Each Operating Committee shall take action by unanimous Member Vote. If an Operating Committee is unable to reach agreement on a matter properly presented to such Operating Committee for its consideration, the matter shall be resolved by the procedure set forth in Section 2.8 (except as otherwise provided therein).

(g) Each Operating Committee may, as it deems appropriate, delegate its decision-making authority for specific matters or types of matters (other than, as applicable in the case of the JDC and JCC, approval of updates of the Development Plan, Commercialization Plan, Development Budget or Commercialization Budget for which that Operating Committee is responsible, or as provided in Section 3.4) to subcommittees or specific groups, each with representatives from both Members, which shall make such decisions by consensus. If such subcommittees or groups do not reach consensus on a matter, either Member may refer such matters back to such Operating Committee for resolution.

(h) Notwithstanding the enumerated authority of the JEC in this Agreement and the Operating Agreement and the express reservation to the decision-making authority of the Member Parties of certain matters herein and therein: in the event that the JEC, acting (i) by unanimous affirmative Member Votes (as defined in the Operating Agreement) pursuant to Section 6.5(d) of the Operating Agreement, or (ii) by unanimous written consent pursuant to Section 6.5(c) of the Operating Agreement, takes action on a matter relating to the Exploitation of the Combination Product, but with respect to which matter authority and

responsibility have not been delegated to or vested in the JEC, the Member Parties shall be deemed to waive any objection to the effect that the JEC acted beyond the scope of its authority or responsibility, and the resolution of such matter shall be binding on the Member Parties for purposes of this Agreement and the Operating Agreement .

2.7 Alliance Managers .

(a) Gilead and BMS shall each designate within their respective organizations an alliance manager (an "Alliance Manager") with responsibility for facilitating the interaction and cooperation between Gilead and BMS with respect to the JV and the Exploitation of the Combination Product in the Territory. The initial Alliance Managers are identified in Annex A hereto. Each Member Party may change its Alliance Manager from time to time upon written notice to the other Member Party.

(b) The Alliance Managers shall attend all meetings of the JEC and each Operating Committee (other than the JFC) and support the chairpersons of the JEC and each Operating Committee in the discharge of their responsibilities. The Alliance Managers shall be nonvoting participants in such meetings, unless they are also appointed members of the applicable committee(s). Each Alliance Manager shall endeavor to create and maintain a collaborative work environment within and among the JEC and the Operating Committees. In addition, each Alliance Manager: (i) shall be the point of first referral in certain matters subject to dispute resolution as provided in Section 2.8; (ii) shall coordinate the relevant functional representatives of the Member Parties; (iii) shall provide a single point of communication for seeking consensus both internally within the respective Member Parties' organizations and between the Member Parties; (iv) shall identify and bring disputes to the attention of the JEC or an Operating Committee as appropriate in a timely manner; (v) shall plan and coordinate cooperative efforts and internal and external communications; and (vi) shall take responsibility for ensuring that governance activities, such as the conduct of required JEC and Operating Committee meetings and production of meeting minutes, occur as set forth in this Agreement and in the Operating Agreement and that relevant action items agreed upon at such meetings are appropriately carried out or otherwise addressed.

(c) Notices given by a Member Party to the other Member Party with respect to Development Activities, Combination Product or EFV, TDF or FTC bulk active pharmaceutical ingredient Manufacturing and Commercialization Activities shall be made to the other Member Party's Alliance Manager and to such other Operating Committee or JEC member of such other Member Party as is most directly involved in or informed of the relevant activity, except that if Gilead or BMS is selected as the Supplier pursuant to Section 4.2(a), it shall not be required to provide such notice to the other Member Party's Alliance Manager with respect to its toll manufacturing activities.

2.8 Dispute Resolution .

(a) Disputes may be referred to the JEC for resolution, as follows: (i) if an Operating Committee is unable to reach agreement on a matter properly presented to such Operating Committee for its decision, the Operating Committee shall refer the matter to the Alliance Managers for Gilead and BMS, and if the Alliance Managers are unable to resolve the

dispute within **[*]** after such referral, then the matter shall be referred to the JEC; and (ii) either Member Party may refer to the JEC any issue arising under this Agreement or the Operating Agreement and not otherwise covered by clause (i).

(b) If the JEC is unable to resolve a dispute referred to it by the Alliance Managers or by a Member Party pursuant to Section 2.8(a) within **[*]** after such referral, or in the event that the JEC is unable to resolve a dispute arising within the JEC, then the dispute shall be referred for resolution to the Chief Executive Officer of Gilead Parent and, for BMS, the Chief Executive Officer of BMS Parent or any direct report designated by the Chief Executive Officer of BMS Parent (who shall not be a member of the JEC or any Operating Committee).

(c) If the Chief Executive Officer of Gilead Parent and Chief Executive Officer (or designee, as applicable) of BMS Parent are unable to reach agreement on a disputed matter referred to them pursuant to Section 2.8(b) within **[*]** after such referral, then either Gilead or BMS may refer the disputed matter to binding arbitration pursuant to Section 15.6 if and only if, and to the extent that (A) the disputed matter relates to or arises out of the validity, interpretation or construction of, or the compliance with or breach of, this Agreement, the Operating Agreement, any Ancillary Agreement, or any other agreement contemplated by this Agreement to which a Member Party (or its Affiliates) and the JV and/or the other Member Party (or its Affiliates) are parties; (B) the disputed matter came before the JEC pursuant to Section **[*]** or Section **[*]** (provided that any dispute relating to the **[*]** may be submitted to arbitration only with respect to the issue of whether specific **[*]** are **[*]** , any dispute relating to **[*]** pursuant to **[*]** may be submitted to arbitration only with respect to the issue of **[*]** , any dispute relating to **[*]** may be submitted to arbitration only with respect to matters arising pursuant to **[*]** , and any dispute relating to **[*]** may be submitted to arbitration only with respect to matters arising pursuant to **[*]** ; or (C) there is a dispute as to whether the **[*]** are satisfied with respect to a matter.

(d) For the avoidance of doubt, the dispute resolution procedures set forth in Sections 2.8(a), 2.8(b) and 2.8(c) shall not apply to any deadlock within the JEC or any Operating Committee resulting from a proposal by one Member's committee members to reverse or modify a decision of the JEC or such Operating Committee with respect to a matter previously presented to it for decision and approved by unanimous Member Vote or unanimous written consent of its members, unless all of the following conditions are satisfied: (i) such proposal is **[*]** the applicable JEC or Operating Committee decision; (ii) the deadlock involves **[*]** ; and (iii) the applicable JEC or Operating Committee decision, if not reversed or modified, would **[*]** pursuant to this Agreement (it being understood that if only certain aspects of the applicable JEC or Operating Committee decision produce these results, only they shall be subject to the dispute resolution procedures set forth in Sections 2.8(a), 2.8(b) and 2.8(c), and the balance of such decision shall remain in effect); provided , however , that this Section 2.8(d) shall not apply to the deliberations and decisions of the JCC pursuant to Sections **[*]** , and deliberations and decisions of the JEC with respect to any disputes that arise within the JCC with respect thereto; and provided , further , that the JCC's and the JEC's reconsideration of prior decisions with respect to the matters covered by the preceding proviso shall be governed by **[*]** , respectively, and in the event of any such reconsideration (and any dispute resolution and arbitration in connection therewith), the prior decision in force at the time of reconsideration shall remain in force and

continue to apply until such time, if any, as a modified position may be agreed by the JCC or the JEC, or adopted by the arbitrator(s), as the case may be.

(e) Nothing in this Section 2.8 shall affect the right of a Member Party to exercise its rights under Section 14.4 with respect to a Material Default by the other Member Party, concurrently with the exercise of its rights under this Section 2.8. In the event that, at any time prior to completion of the dispute resolution procedures set forth in this Section 2.8, the Non-Breaching Member Party delivers a notice of Material Default to the Breaching Member Party, the sixty (60) day cure period referred to in Section 14.4(a) shall begin to run upon the receipt of such notice and shall run concurrently with the procedures set forth in this Section 2.8.

2.9 Collaboration Principles . The Parties agree to abide by the following principles ("Collaboration Principles") in their conduct of the Development Activities and the Commercialization Activities, and to cause their representatives on the JEC and the Operating Committees to observe these principles in connection with their committee-related activities:

(a) Subject to Sections 2.9(b) and (c), the purposes of the JV are (i) to develop, manufacture, and commercialize the Combination Product for use within the Territory, and (ii) to optimize the commercial potential of the Combination Product within the Commercialization Plan, subject to the Commercialization Budget. For the avoidance of doubt, nothing in this Agreement or in the Operating Agreement shall be deemed to restrict or prohibit either Member Party or any of its Affiliates from (x) commercializing its Single Agent Product(s) and/or Double Agent Product as applicable, (y) subject to Sections 3.10 and 5.6, developing, manufacturing and commercializing combination products (other than the Combination Product) for the treatment of HIV infection or otherwise, including, without limitation, any product containing such Party's Single Agent Product(s) and/or Double Agent Product or (z) conducting clinical studies involving one or more of EFV, FTC and TDF, or any combination thereof (including the Combination Product).

(b) Subject to Section 5.7, each Party's Promotion of the Combination Product in the Territory shall be in accordance with the Approved Marketing Materials, the FDA-approved label and the package insert for the Combination Product; provided , however , that subject to the foregoing, each Party shall have a right to position the Combination Product within its HIV product portfolio in its sole discretion.

(c) Except as expressly provided otherwise in this Agreement (or in the Operating Agreement or any Ancillary Agreement) and notwithstanding the powers and authority delegated to a Party, the JEC or an Operating Committee, neither Party shall have any obligation (i) to conduct activities in support or furtherance of the Exploitation of the Combination Product, unless mutually agreed in writing by the Parties or expressly set forth in this Agreement, the Commercialization Plan or Development Plan, or (ii) to make payments or incur expenses or liabilities in support or furtherance of the Exploitation of the Combination Product unless mutually agreed in writing by the Parties or expressly set forth in the Commercialization Budget or the Development Budget.

2.10 Commercialization Budget/Plan Deadlocks . In the event of a Commercialization Budget Deadlock or a Commercialization Plan Deadlock (as such terms are

defined below) with respect to any portion of the period from the Effective Date through the end of the Subsequent Launch Period, then in lieu of any other dispute resolution procedures set forth in this Agreement or in the Operating Agreement, the Parties agree that the dispute shall be conclusively resolved as follows:

(a) If a Commercialization Budget Deadlock relates to any Calendar Year (or part thereof) during the period from the Effective Date through the end of the Initial Launch Period, the level of aggregate expenditure for the Calendar Year (or part thereof) in dispute shall be fixed, upon notice given by a Member Party to the other Member Party, at (i) in the case of disputes on annual updates, the level for the Calendar Year in dispute provided for in the initial version of the Commercialization Budget included in Annex C hereto (as most recently updated, if applicable), or (ii) in the case of disputes on interim updates, the level then in effect for the relevant part of the current Calendar Year.

(b) If a Commercialization Budget Deadlock relates to any Calendar Year (or part thereof) during the Subsequent Launch Period, (i) the level of aggregate expenditure for the Calendar Year (or part thereof) in dispute shall be fixed, upon notice given by a Member Party to the other Member Party, at (A) in the case of disputes on annual updates, **[*]** of the level (as most recently updated) budgeted for the Calendar Year immediately preceding the Calendar Year in dispute unless both Members, through their respective representatives on the JEC have proposed levels of aggregate expenditure both of which are lower than the aforesaid **[*]** level, in which case the level of aggregate expenditure for the Calendar Year in dispute shall instead be fixed at the **[*]** of the **[*]** by the Members through their respective representatives on the JEC, or (B) in the case of disputes on interim updates, the level then in effect for the relevant part of the current Calendar Year, and (ii) if there is a dispute regarding the level of aggregate expenditure provided for in a subsequent annual update to the Commercialization Budget covered by the foregoing clause (A), such level shall be fixed, upon notice given by a Member Party to the other Member Party, at the amount **[*]** which is the **[*]** of the **[*]** by the Members through their respective representatives on the JEC.

(c) If a Commercialization Plan Deadlock relates to any Calendar Year (or part thereof) during the Initial Launch Period, the **[*]** for the Calendar Year (or part thereof) in dispute shall be fixed, upon notice given by a Member Party to the other Member Party, at (i) in the case of disputes on annual updates, the level for the Calendar Year in dispute provided for in the initial version of the Commercialization Plan included in Annex C hereto (as most recently updated, if applicable), or (ii) in the case of disputes on interim updates, the level then in effect for the relevant part of the current Calendar Year.

(d) If a Commercialization Plan Deadlock relates to any Calendar Year (or part thereof) during the Subsequent Launch Period, (i) the **[*]** for the Calendar Year (or part thereof) in dispute shall be fixed, upon notice given by a Member Party to the other Member Party, at (A) in the case of disputes on annual updates, **[*]** of the level (as most recently updated) in effect for the Calendar Year immediately preceding the Calendar Year in dispute, unless both Members, through their respective representatives on the JEC, have proposed **[*]** both of which are lower than the aforesaid **[*]** level, in which case the **[*]** for the Product Year in dispute shall instead be fixed at the **[*]** of the **[*]** by the Members through their respective representatives on the JEC, or (B) in the case of disputes on interim updates, the level then in effect for the relevant

part of the current Calendar Year, and (ii) if there is a dispute regarding the **[*]** provided for in a subsequent annual update to the Commercialization Plan covered by the foregoing clause (A), such level shall be fixed, upon notice given by a Member Party to the other Member Party, at the amount **[*]** which is the **[*]** of the **[*]** by the Members through their respective representatives on the JEC .

For Calendar Years (or any part thereof) commencing after the Subsequent Launch Period, any aggregate expenditures in a Commercialization Budget, and any **[*]** in a Commercialization Plan, shall be decided by the mutual agreement in writing of the Member Parties; failure to reach agreement thereon shall not be subject to dispute resolution hereunder. As used in this Agreement, (x) a "Commercialization Budget Deadlock" shall mean that the JEC is unable to reach agreement, by unanimous Member Vote (as defined in the Operating Agreement) or unanimous written consent of the members of the JEC, on the level of aggregate expenditure in any annual or (in the case of clause (y) of Section 2.2(vi)) interim update to the Commercialization Budget covering all or any portion of the period from the Effective Date through the end of the Initial Launch Period or all or any portion of the Subsequent Launch Period and (y) a "Commercialization Plan Deadlock" shall mean that the JEC is unable to reach agreement, by unanimous Member Vote or unanimous written consent of the members of the JEC, on the **[*]** to be conducted in any annual or (in the case of clause (y) of Section 2.2(vi)) interim update to the Commercialization Plan covering all or any portion of the Initial Launch Period or the Subsequent Launch Period.

2.11 Expenses . Gilead and BMS shall each bear their own expenses related to the management of the JV, including without limitation all expenses relating to the meetings of the JEC and the Operating Committees, the participation of the Members' representatives in such meetings, communications with the other Member in connection with such meetings or matters within the authority of the committees, and travel to and from such meetings, and such expenses shall not be deemed JV Expenses or Authorized Other Expenses.

SECTION 3.
DEVELOPMENT ACTIVITIES

3.1 General . Under the oversight of the JDC, Gilead and BMS shall each perform, or cause its Affiliates to perform, on behalf of and in the name of the JV, the Development Activities designated for such Member Party in the Development Plan, in each case in accordance with the timeline set forth in the Development Plan. For the avoidance of doubt, Gilead, on its own behalf and in its own name, shall have the sole right to **[*]** in its sole discretion and without oversight by the JDC or the JEC, but shall **[*]** with respect to **[*]** such **[*]** .

3.2 Clinical Development .

(a) Without limitation of Section 3.1, Gilead, under the oversight of the JDC, shall have primary responsibility for the development of the Combination Product and the conduct of any clinical trials and bioequivalence studies required for obtaining approval of an NDA for the Combination Product in the Territory in the Field, in each case only as set forth in the Development Plan or otherwise mutually agreed upon by the Member Parties.

(b) In the event that either Member Party desires (i) to conduct or sponsor, or cause to be conducted or sponsored, jointly with the other Member Party, or in the name of the JV, a clinical trial of the Combination Product (whether such clinical trial would involve the Combination Product alone, or with one or more other products) other than any clinical trial contemplated by the Development Plan, including, without limitation, an expanded access program or Phase IIIb/IV study, or (ii) to support jointly with the other Member Party (either on their own behalf or in the name of the JV) any such clinical trial sponsored by an investigator, such Member Party shall so notify the other Member Party. The Member Parties shall then discuss the particulars of the proposed clinical trial. In the event that the Member Parties, each in its sole discretion, agree to conduct jointly or sponsor jointly such clinical trial (either on their own behalf or in the name of the JV), the JDC representatives shall prepare and agree upon a trial protocol and designate a Member Party to take the lead in conducting or supervising such clinical trial and negotiating any necessary clinical trial agreements, as the case may be, and the external, out-of-pocket costs of the Member Parties, if any, without any markup, relating to such clinical trial shall be treated as Authorized Development Expenses. In the event that the Member Parties, each in its sole discretion, agree to support jointly (either on their own behalf or in the name of the JV) any investigator-sponsored clinical trial, the Member Parties shall coordinate with the investigator seeking to conduct such clinical trial and agree upon an appropriate grant of support (including, without limitation, support in the form of funding or the contribution of drug product), and the external, out-of-pocket costs of the Member Parties, if any, without any mark up, with respect to such clinical trial shall be treated as Authorized Development Expenses. Each clinical trial that the Member Parties shall determine to conduct, sponsor or support jointly pursuant to the preceding two sentences shall be referred to as a "Co-Funded Clinical Trial." The Clinical Data with respect to any Co-Funded Clinical Trial shall be deemed to be Joint Know-How; provided , however , that, in the case of any investigator-sponsored clinical trial, the Clinical Data resulting from any such Co-Funded Clinical Trial shall be deemed to be Joint Know-How only if and to the extent that the JV or either or both Member Parties obtains any right, title and interest in and to such Clinical Data.

For the avoidance of doubt, nothing contained in this Section 3.2 is intended, or shall be construed, to restrict or prohibit either Member Party from conducting independently or together with one or more Third Parties, any clinical trial of the Combination Product (whether such clinical trial would involve the Combination Product alone, or with one or more other products). Prior to a Member Party's commencing any such clinical trial sponsored by such Member Party, whether independently or together with one or more Third Parties, the applicable Member Party shall provide a brief summary of the protocols to the other Member Party's representatives on the JDC (it being understood that neither such representatives nor the JDC shall have any approval rights with respect to such study or protocols), provided that (A) each such summary shall constitute Confidential Information of the disclosing Member Party to the extent that the information provided in such summary satisfies the criteria set forth in Section 12.3, (B) the receiving Member Party's representatives shall not use such summary for any purpose other than providing comments thereon to the disclosing Member Party (which comments may be accepted or rejected by the disclosing Member Party in its sole discretion), and (C) the receiving Member Party's representatives shall not disclose such summary to any Persons other than employees of such Member Party who have an obligation (x) not to further disclose such summary and (y) to use such summary solely in order to assist such Member Party's representatives in providing comments thereon. For the avoidance of doubt, a Member

Party's providing such summary with respect to any such clinical trial pursuant to this Agreement shall not be construed to have the effect of causing the activities with respect to such clinical trial to be deemed to be Project Activities for purposes of this Agreement.

(c) In the event that the Member Parties determine to conduct additional Development Activities for an alternative formulation or presentation of the Combination Product, and conduct or cause to be conducted such additional activities, the external, out-of-pocket costs of the Member Parties, if any, without any markup, with respect to such activities shall be treated as Authorized Development Expenses.

3.3 Formulation and CMC Data . Without limitation of Section 3.1, Gilead, under the oversight of the JDC, shall have primary responsibility for formulation and Manufacturing Process development for, and preparation of the CMC Data relating to, the Combination Product as contemplated by the Development Plan. Formulation development shall include, without limitation, conducting the formulation screening, optimization, scale-up and technology transfer for the Combination Product in the Field.

3.4 Regulatory Matters .

(a) Without limitation of Section 3.1, Gilead, under the oversight of the JDC and with the participation of BMS as described in this Section 3.4, shall have primary responsibility for preparing and filing all necessary Regulatory Documentation and for acting as liaison on behalf of the JV for all communications with the Regulatory Authorities in the Territory relating to the obtaining of approval of the Combination Product in the Field under an NDA separate from the respective NDAs for Sustiva, Viread, Emtriva and Truvada. Gilead shall prepare and file all Combination Product Regulatory Documentation with Regulatory Authorities in the Territory in the name of the JV. All submissions of Combination Product Regulatory Documentation consisting of any INDs, NDAs, sNDAs, CMC Data, drug master files and PSURs (collectively, the "Key Regulatory Submissions") shall be approved in advance by the JDC (which shall not delegate such approval to any subcommittees or groups referred to in Section 2.6(g)). If permitted by Applicable Law, the label for the Combination Product shall list the agents in the following order: **[*]** .

(b) Gilead shall notify BMS as early as reasonably practicable in advance of all meetings (whether face to face or by teleconference) and communications with representatives of the Regulatory Authorities in the Territory concerning the Combination Product and in order to provide BMS with an opportunity to be present at such meetings and to review and comment on such communications; provided , however , that in no event shall Gilead, after using reasonable efforts to provide BMS with an opportunity to be present at any such meeting or to review and comment on such communications, be required to postpone any such meeting to ensure that BMS attends such meeting or to postpone any such communication in order to ensure that BMS' comments are received by Gilead in advance of its submission to Regulatory Authorities, as the case may be. In order to enhance the efficiency of the Member Parties' coordination on regulatory matters concerning the Combination Product, and increase the likelihood that BMS will have a meaningful opportunity to participate in such activities, during the term of this Agreement, BMS will cause one of its employees with the necessary regulatory expertise and decision-making authority to be dedicated on a full-time basis to serving

as a conduit for BMS' participation in such activities. Gilead shall promptly forward to BMS in advance of any such meeting copies of all documents and other relevant information relating to such meeting. Notwithstanding anything contained in this Agreement to the contrary, (i) at any such meeting with, or any such communication to, the Regulatory Authorities in the Territory concerning the Combination Product, at which BMS and Gilead are present or in which both Member Parties participate, each Member Party shall take the lead on matters relating to its respective Single Agent Product(s) or Double Agent Product and (ii) at any such meeting with, or any such communication to, such Regulatory Authorities concerning the Combination Product, at which only one Member Party meets or in which communication only one Member Party participates (without the other Member Party's presence or participation), such Member Party shall not engage in any substantive discussions pertaining to the other Member Party's Single Agent Product(s) or Double Agent Product, as the case may be, including, without limitation, with respect to API consisting of EFV, TDF or FTC, as the case may be, as it relates to the Combination Product.

(c) Each Member Party shall promptly forward to the other Member Party any written communications received from representatives of the Regulatory Authorities relating to the Combination Product. BMS shall provide Gilead with full access to and copies (including electronic copies if requested) of the BMS Regulatory Documentation, including without limitation the NDA for Sustiva, as Gilead may reasonably request in connection with (and solely for the purpose of) the performance of its duties under this Section 3.4.

(d) Nothing in this Section 3.4 shall prohibit or restrict either Member Party from communicating with the Regulatory Authorities on matters relating to the Exploitation of any of its respective Single Agent Product(s), Double Agent Product or other pharmaceutical products. Each Member Party shall promptly notify the other Member Party of any label change for the first Member Party's respective Single Agent Product(s) or Double Agent Product that may result in a label change for the Combination Product. If any communications from Regulatory Authorities regarding potential label changes for the Combination Product are reasonably expected to lead to a label change for a Member Party's Single Agent Product or Double Agent Product, then, notwithstanding anything in this Agreement to the contrary, the affected Member Party shall take the lead in dealing with the Regulatory Authorities on such matter.

3.5 Performance; Subcontracting . Gilead and BMS each shall perform its respective Development Activities in material compliance with GCP, GLP, and GMP, in each case to the extent applicable, and the requirements of Applicable Law, and so long as there is a Development Plan in effect, shall use Commercially Reasonable Efforts to perform its Development Activities under the Development Plan efficiently and expeditiously, subject to the Development Budget. Either Member Party may subcontract the performance of its respective Development Activities; provided , however , that the subcontracting Member Party shall oversee the performance by its subcontractors of the subcontracted Development Activities in a manner that would be reasonably expected to result in their timely and successful completion and shall remain responsible for the performance of such Development Activities in accordance with this Agreement and the Development Plan.

3.6 Records .

(a) Maintenance of Records . Gilead and BMS each shall severally (in accordance with their respective allocations of responsibilities with respect to Project Activities) maintain, or cause to be maintained, all Combination Product Regulatory Documentation and final supporting records and documentation therefor (but not draft records or documentation therefor except as otherwise required by Applicable Law), in sufficient detail and in material compliance with GCP, GLP, and GMP, in each case to the extent applicable. Such records shall be complete and accurate and shall fully and properly reflect all work done and results achieved in the performance of its respective Development Activities in a manner appropriate for any regulatory purpose and, when applicable, for use in connection with Patent filings, prosecution and maintenance. Such documentation and records shall be retained for at least (i) three (3) years or (ii) such longer period as may be required by Applicable Law.

(b) Access to Records . Each Member Party shall have the right, during normal business hours and upon reasonable notice, to inspect and copy any Combination Product Regulatory Documentation and final supporting records and documentation therefor generated or maintained by the other Member Party, for use by the receiving Member Party solely in connection with the performance of its Development Activities in a manner consistent with the Development Plan. Subject to the terms and conditions of this Section 3.6(b), each Member Party shall also have the right, during normal business hours and upon reasonable notice, to obtain from the other Member Party access to or copies of scientific, regulatory and technical records, documentation and data solely to the extent relating to the Combination Product or such other Member Party's Single Agent Product(s) and/or Double Agent Product, as the case may be, and solely to the extent (i) necessary in order for the receiving Member Party to perform its obligations with respect to Development Activities in a manner consistent with the Development Plan, (ii) necessary for the receiving Member Party to confirm compliance with and/or to comply with GLP, GCP and GMP (to the extent applicable), and other Applicable Law, as it relates to Project Activities, and/or (iii) necessary to enable the receiving Member Party to conduct reasonable diligence on matters potentially giving rise to liability on the part of the JV and/or such receiving Member Party, or to conduct a defense of itself and/or the JV with respect to any such liability, if and to the extent that a fact, circumstance or event has arisen that gives the receiving Member Party a reasonable basis to believe that it or the JV has or may incur such liability, in each case for use by the receiving Member Party for the purpose set forth in clause (i), (ii) or (iii) above, as the case may be. Clause (iii) of the immediately preceding sentence shall not require any Party to provide such data, documentation or records in the event that the Parties' interests in such matter are or may be **[*]** , in which case **[*]** , shall apply. Each such request shall be made in writing and shall state the reason(s) therefor (each a "Development Record Request"). The Member Party from which such records, documentation or data are requested shall have the right to raise reasonable objections in writing in response to such Development Record Request, including, without limitation, based on such Member Party's interests in protecting from disclosure to the requesting Member Party trade secrets or other competitive business information. Upon any such objection being asserted, the Member Parties shall promptly confer in an attempt to address each Member Party's concerns and reach a resolution with respect to the matter, and in the event that the Member Parties are unable to agree upon a mutually agreeable resolution, either Member Party shall have the right to refer the matter to the JDC. In the event that any such dispute is ultimately **[*]** determine as a threshold matter whether and to what extent one or more criteria set forth in clauses (i), (ii) and/or (iii) above have been satisfied by the requesting Member Party, and, if so, shall make a determination with

respect to whether and to what extent the disclosure of such information shall be required by **[*]** , and **[*]** . In making such determination, **[*]** to the facts and arguments set forth in the Development Record Request and the other Member Party's written response thereto, and (y) shall have the right to require the receiving Member Party to abide by terms and conditions for the handling, use and non-disclosure (either within such Member Party's organization and/or to Third Parties) of such information as may be reasonable under the circumstances. Except as provided in this Section 3.6, a Member Party shall not have the right to obtain from the other Member Party access to or copies of the other Member Party's records, documentation and data described above, unless otherwise expressly permitted pursuant to this Agreement or the other Member Party gives its consent in its sole discretion.

3.7 Updates to Development Plan and Development Budget . Gilead shall prepare and submit to each of the JDC and JFC (i) not less than **[*]** prior to the start of each Calendar Year, a proposed update to the Development Plan and the Development Budget for such Calendar Year and (ii) not less than **[*]** prior to the start of each Calendar Year, a preliminary update to such Development Budget (which may address budget issues at a general level, may be incomplete and is subject to change). In addition, either Member Party, directly or through its representatives on the JDC, may propose updates to the Development Plan and the Development Budget to the JDC from time to time as appropriate in light of changed circumstances. Such changes and updates shall be subject to approval by the JDC as set forth in Section 2.6(f), with annual updates to be approved at least **[*]** prior to the start of such Calendar Year. If an annual or interim update to the Development Plan or the Development Budget is not approved by the JDC, then, subject to Sections 2.2(v) and 2.8 as applicable, the Development Plan or Development Budget, as the case may be, shall continue in effect as approved and most recently updated pursuant to this Section 3.7. Updated Development Plans shall not cover items other than those included in the initial Development Plan unless mutually agreed by the Member Parties.

3.8 Development Expenses . **[*]** shall be **[*]** responsible for all costs that it incurs (a) in its sole discretion, in connection with the **[*]** or (b) in the performance of **[*]** Development Activities as set out in the initial Development Plan. The Parties agree that the JV shall bear all JV Expenses incurred by Gilead or BMS in connection with the performance of its respective Development Activities to the extent meeting all of the following criteria ("Authorized Development Expenses"): (i) such Development Activities are conducted pursuant to the Development Plan and are within an area of responsibility for the relevant Member Party listed in the Development Budget as being chargeable to the JV; (ii) the total expenses for that area of responsibility for that Member Party for the relevant period to the extent that they do not exceed the corresponding budgeted amount for that area in that period by more than **[*]** unless approved by the JDC; (iii) the expenses are external, out-of-pocket costs of Gilead or BMS, without any markup; and (iv) the expenses are not **[*]** costs of **[*]** referred to in the **[*]** .

3.9 Reports . Gilead and BMS shall each present to the other, at a meeting of the JDC at least once per Calendar Quarter until the first anniversary of the Launch of the Combination Product, and, thereafter, at a meeting of the JDC, at least semiannually, a report (oral and written, which written report shall not be required to contain more detail than that typically included in an executive summary) describing (i) the Development Activities it has performed, or caused to be performed, since the preceding meeting at which such a report was

presented (or, in the case of the first meeting of the JDC, prior to such meeting) and on a Calendar Year-to date basis, evaluating the work performed in relation to the goals and timeline of the Development Plan, (ii) its Development Activities in process and the future activities it expects to initiate during the then-current Calendar Year, as compared to the Development Plan, and (iii) in the case of the written report the Authorized Development Expenses incurred, and expected to be incurred, by such Member Party for the then-current Calendar Year, as compared to the Development Budget. In addition, Gilead and BMS shall report promptly to the JDC through their respective committee members any material developments with respect to Development Activities that they are responsible for performing under the Development Plan. Notwithstanding anything contained in this Section 3.9 to the contrary, each Member Party's reporting obligations under this Section 3.9 shall automatically be deemed to terminate with respect to any period in which there is not then in effect a Development Plan and Development Budget.

3.10 New Products . During the period from the date of this Agreement through the **[*]** anniversary of the Effective Date, the Member Parties agree to use commercially reasonable efforts to evaluate and pursue an arrangement with each other for the co-development and co-commercialization of **[*]** product comprising **[*]** ; provided , however , that the Member Parties may terminate such efforts by mutual written agreement if they determine that the proposed product is not commercially or technically feasible, with such agreement to terminate not to be unreasonably withheld. In furtherance of the foregoing, notwithstanding anything in this Agreement to the contrary, during the period from the Effective Date through the **[*]** anniversary of the Effective Date (a) Gilead shall not (and shall cause its Affiliates not to) **[*]** an **[*]** with any **[*]** for **[*]** within the Territory of any **[*]** that contains **[*]** with **[*]** that is (i) **[*]** to that Third Party and (ii) **[*]** in the Territory as of **[*]** , and (b) BMS shall not (and shall cause its Affiliates not to) **[*]** an **[*]** with any **[*]** for **[*]** within the Territory of any **[*]** that contains **[*]** in combination with **[*]** that are (i) proprietary to that Third Party and (ii) **[*]** in the Territory as of **[*]** .

3.11 Publication .

(a) Either Member Party shall have the right to publish or present data and findings resulting from Project Activities, including, without limitation, Co-Funded Clinical Trials, subject to the right of objection or demand for modification by the other Member Party in the interest of (i) protecting the Confidential Information of such other Member Party, (ii) preserving the intellectual property rights of such other Member Party or the JV, and/or (iii) assuring that the publication or presentation presents such data and findings in a fair, accurate and balanced manner in accordance with ethical, medical and/or scientific standards. During the term of this Agreement, each Member Party shall provide to the other Member Party's representatives on the JDC for review copies of all academic, scientific and medical publications and presentations specifically relating to the Combination Product (or otherwise relating to the combined use of EFV, FTC and TDF) that the Member Party proposes to submit for publication or presentation and that result from Project Activities; provided , however , that notwithstanding anything contained in this Section 3.11 to the contrary, the terms and conditions of this Section 3.11 shall not apply to any publications and presentations resulting directly or indirectly from Study 934. Review of such publications and presentations shall be conducted only for purposes of considering compliance with the standards set forth in clauses (i), (ii) and (iii) above (the

"Publication Standards") and shall consider whether any portion of any such publication or presentation should be modified or deleted in order to conform to the Publication Standards. In addition, in the case of any such publication or presentation resulting from a Co-Funded Clinical Trial, the Member Party that proposes to submit such publication or presentation shall have the right to do so only if the other Member Party agrees that such publication or presentation, as may be modified, conforms to the Publication Standards, which agreement shall not be unreasonably withheld or delayed. Such Member Party shall consider in good faith any comments provided to it by such other Member Party with respect to such publication or presentation, including, without limitation, any comments of a scientific or medical nature. In the case of any such publication or presentation resulting from other Project Activities, the other Member Party shall have a right to comment on such publication or presentation, provided that the Member Party proposing such publication or presentation shall be under no obligation to accept such comments (except to the extent necessary to preserve the intellectual property rights of such other Member Party or the JV) and shall be free to publish or present, as the case may be. Written copies of each proposed publication or presentation required to be provided for review shall be provided to the other Member Party's representatives on the JDC no later than **[*]** before submission for publication or presentation, except that (A) in the case of an abstract, a copy of the abstract shall be provided as soon as reasonably practicable in advance of the submission of such abstract to a Third Party (which period may be less than **[*]** and (B) if the deadline for submission of such publication or presentation is less than **[*]** from the date of completion of that publication or presentation, copies will be provided as soon as reasonably practicable in advance of such submission deadline. In the case of any proposed publication or presentation of a Member Party that is required to be reviewed by the other Member Party, in the event that the Member Parties fail to reach agreement, if applicable, on such publication or presentation by the conclusion of the applicable review period, and as a result there is a dispute between the Member Parties with respect to such publication or presentation, such dispute may be referred by either Member Party to the JDC. The Member Parties shall comply in any publications made pursuant to this Section 3.11 with standard academic practice regarding authorship of scientific publications and recognition of contribution of parties. For the avoidance of doubt, nothing contained in this Section 3.11 shall alter or affect a Member Party's confidentiality obligations pursuant to Section 12.

(b) Subject to compliance with Section 3.11(a), nothing in this Agreement shall restrict either Member Party from providing information on Co-Funded Clinical Trials conducted by the other Member Party to any Clinical Trials Registry or Clinical Trials Results Database, in accordance with Applicable Law and industry practice. For purposes of this Section 3.11(b), (i) "Clinical Trial Registry" means any listing of Clinical Trials which have been initiated, whether maintained by the U.S. federal government (*e.g.*, www.clinicaltrials.org) or an independent organization (e.g., PhRMA) and (ii) "Clinical Trials Results Database" means any database which provides access to Clinical Trial results to physicians, patients and the general public, whether maintained by any government, Regulatory Authority or independent organization (e.g., PhRMA).

3.12 Certain Inspections . Each Member Party shall involve the other Member Party, to the extent feasible, in its GCP, GLP and GMP audit process for any facilities used in the performance of Development Activities for the Combination Product (including the facilities of any subcontractors to the extent permitted pursuant to the terms of the applicable subcontract or

otherwise permitted by the applicable subcontractor) and shall consider in good faith any issues concerning such compliance or any safety and efficacy issues with respect to the Combination Product or the active pharmaceutical ingredient(s) of the other Member Party's Single Agent Product(s) or Double Agent Product, as applicable, that are raised by the other Member Party on a reasonable basis as a result of such audits. Each Member Party shall also have the right, during normal business hours and upon reasonable notice, to inspect the other Member Party's facilities (or the facilities of any subcontractor to the extent permitted pursuant to the terms of the applicable subcontract or otherwise permitted by the applicable subcontractor), used in the performance of Development Activities for the Combination Product, if the Member Party desiring such inspection has a reasonable basis on which to raise in good faith any such compliance, safety or efficacy issues apart from the aforementioned audit inspections. Any audit referred to in this Section 3.12 shall be subject to reasonable restrictions on access to confidential information and trade secrets by the inspecting Member Party to the extent such confidential information and trade secrets are not expressly required to be disclosed by such Member Party to the other Member Party pursuant to this Agreement.

3.13 Medical Affairs and Medical Communications .

(a) Gilead and BMS shall determine independently how to utilize and deploy their respective medical science liaisons for activities relating to the Combination Product. The JDC shall develop and approve presentation materials for use by each Member Party's medical science liaisons when engaging in activities to support Promotion of the Combination Product, and the medical science liaisons shall use only such approved presentation materials in such activities. The JDC shall develop, and the Member Parties shall implement, procedures to coordinate the training of each Member Party's medical science liaisons on any approved presentation materials.

(b) The JDC shall develop guidelines and procedures for determining and providing appropriate responses to medical inquiries about the Combination Product, including assigning responsibilities for medical communications. The Parties shall develop a set of standard response documents for the Member Parties to use in responding to medical inquiries about the Combination Product, as follows: (i) each Member Party shall develop standard response documents relating to their respective Single Agent Product(s) and Double Agent Product as incorporated in the Combination Product, and (ii) Gilead shall develop draft standard response documents relating to the Combination Product as a whole (substantially incorporating that developed by each Member Party for its Single Agent Product(s) and/or Double Agent Product), for review, comment and approval by the JDC.

SECTION 4 .
MANUFACTURING AND SUPPLY

4.1 Clinical Supply . Gilead shall Manufacture or have Manufactured through a subcontractor, on behalf of the JV, clinical supplies of the Combination Product in such quantities as may be needed for the clinical trials and studies required to obtain initial Approvals of an NDA. In connection with such Manufacture, Gilead and BMS each shall donate to the JV quantities of FTC and TDF, in the case of Gilead, and EFV, in the case of BMS. Each Member

Party's Cost of Goods of such supply, as well as Gilead's Cost of Goods for Manufacture of the clinical supplies of the Combination Product, shall not be chargeable to the JV.

4.2 Commercial Supply .

(a) The initial Development Plan designates the initial commercial Supplier of the Combination Product, which Supplier shall be the source of Combination Product supply for purposes of the NDA filing and Launch in the Territory. Within **[*]** after the Effective Date, the JCC shall determine the most cost-efficient manner in which to source the commercial supply of the Combination Product, including, without limitation, one or more alternate suppliers. Thereafter, during the term of this Agreement, the JCC shall review annually the appropriate source(s) of commercial supply of the Combination Product after Launch and agree upon appropriate changes. Each Member Party may propose interim changes with respect thereto from time to time between such reviews, which changes the JCC shall adopt if failure to do so would be likely to have a material adverse effect on the Combination Product business. If Gilead or BMS desires to be considered as a possible Supplier of the Combination Product, it shall submit a confidential written proposal to the JV for consideration by the JCC alongside written proposals submitted by recognized, reliable and sufficiently capitalized Third Parties and/or the supply terms pertaining to the initial Supplier. Any proposal submitted by a possible Supplier shall include an offer to perform any required tableting, blistering, packaging, labeling, analytical testing and storage activities with respect to commercial supplies of the Combination Product. The JCC shall select a Person to supply the JV with commercial supplies of the Combination Product on the basis of price, quality, reliability, GMP compliance, security of supply and other relevant commercial considerations. If a Third Party is selected as a Supplier, the JCC shall designate a Member Party to manage the relationship with that Supplier. Any supply contract between the JV and Gilead or BMS as Supplier shall be negotiated on an arm's-length basis and shall contain such terms and conditions as are customary in the pharmaceutical industry, modified as appropriate for the Combination Product.

(b) The JCC, directly or through a designated Member Party, and in coordination with the JDC, shall monitor Manufacturing capacity of, and forecasts and orders for, the Combination Product submitted to the relevant Supplier(s) to ensure that adequate commercial supplies of the Combination Product will be available to meet the demand therefor as projected by the JCC in commercial unit volume forecasts. The JCC shall prepare **[*]** rolling unit volume forecasts at least **[*]** before the commencement of each forecast period, and shall update such unit volume forecasts on a **[*]** basis, or as the JCC deems necessary and appropriate.

(c) In connection with the Manufacture by the Supplier of the commercial supply of the Combination Product for the JV, Gilead and BMS each shall supply to the JV quantities of FTC and TDF, in the case of Gilead, and EFV, in the case of BMS, and in each case in the form of bulk active pharmaceutical ingredient, pursuant to and in accordance with their respective Supply Agreements. In consideration of such supply, the JV shall pay to Gilead and BMS, respectively, the Gilead Transfer Price and the BMS Transfer Price. The JDC shall monitor orders under the respective Supply Agreements to assure consistency in the quantities of FTC, TDF and EFV ordered by the JV thereunder.

SECTION 5.
COMMERCIALIZATION ACTIVITIES

5.1 Co-Promotion Obligations .

(a) Gilead and BMS each shall use Commercially Reasonable Efforts to perform in the Territory the Commercialization Activities that such Member Party is required to perform under the Commercialization Plan in accordance with the Commercialization Budget as applicable to such activities, for so long as there is a Commercialization Plan in effect. Each Member Party shall be required, during the Initial Launch Period and (to the extent there is a **[*]** applicable thereto) the Subsequent Launch Period, to **[*]** per Calendar Quarter, and take the other actions, applicable to it as specified in the Commercialization Plan. Subject to Section 2.10, **[*]** shall apply (i) during the Subsequent Launch Period unless approved by the JEC or JCC as applicable, as part of a Commercialization Plan update pursuant to Section 5.11(c), and (ii) after the Subsequent Launch Period unless approved by the Member Parties. Each Member Party shall be free to engage in **[*]** , and to engage in **[*]** when there is no longer a Commercialization Plan in effect, in each case in its sole discretion.

(b) Gilead and BMS shall select independently the target prescribers to which each shall Promote the Combination Product.

(c) In accordance with Section 2.9(b), Gilead and BMS shall each cause its Field Force to use only the FDA-approved product labels and inserts and, subject to Section 5.7, the Approved Marketing Materials in Promoting the Combination Product, and to make only such statements and claims regarding the Combination Product as are consistent with Applicable Law and FDA-approved product labels and inserts. Gilead and BMS shall not provide or give access to samples of the Combination Product to health care practitioners or patients in connection with Promotion of the Combination Product.

(d) Gilead and BMS shall each Detail the Combination Product and perform its other Promotional activities under this Agreement in the Territory in strict adherence to regulatory and professional requirements, and to all Applicable Law, including, to the extent applicable, the Act; the FDA Guidance for Industry-Supported Scientific and Educational Activities; the Pharmaceutical Research and Manufacturers of America Code on Interactions with Healthcare Professionals; the Office of Inspector General Compliance Program Guidance for Pharmaceutical Manufacturers; the American Medical Association Guidelines on Gifts to Physicians from Industry; the Pharmaceutical Marketing Research Group Guidelines on market research activities; the Prescription Drug Marketing Act of 1987, as amended ("PDMA"); and all federal, state and local "fraud and abuse," consumer protection and false claims statutes and regulations, including but not limited to the Medicare and State Health Programs Anti-Fraud and Abuse Amendments of the Social Security Act, the "Safe Harbor Regulations" found at 42 C.F.R. §1001.952 et seq. As among the Parties, each Member Party shall treat its sales representatives engaged in Detailing the Combination Product as its (or its Affiliate's) own employees for all purposes, including, without limitation, federal, state and local tax and employment laws.

(e) Within **[*]** after the end of each Calendar Quarter (or part thereof) falling within (i) the Initial Launch Period, (ii) (to the extent there is a **[*]** applicable thereto) the

Subsequent Launch Period, or (iii) any period commencing after the Subsequent Launch Period if mutually agreed by the Member Parties pursuant to Section 2.10 (clauses (i), (ii) and (iii) being referred to herein collectively as the "Product Detail Period"), Gilead and BMS shall each furnish the other Parties with a written report, in the form set forth in Annex H attached hereto, setting out the number of Details that it has conducted during such Calendar Quarter (or part thereof) in the Territory. The number so reported shall be determined in accordance with applicable self-reporting procedures for details customarily employed by such Member Party in the Territory for other similarly detailed and similarly reported HIV products to the target health care audience, consistently applied.

(f) In each Calendar Year (or part thereof) falling within the Product Detail Period, subject to the terms of this Section 5.1(f), each Member Party shall **[*]** to conduct (x) the **[*]** for each Calendar Quarter (or part thereof) specified in the Commercialization Plan (the " **[*]** ") and (y) the **[*]** for such Calendar Year (or part thereof) specified in the Commercialization Plan (*i.e* ., the **[*]**) (the " **[*]** "). To the extent that the Product Detail Period includes part but not all of a Calendar Quarter, then the **[*]** for such Calendar Quarter shall be **[*]** . If, in any Calendar Quarter during the applicable Calendar Year, the **[*]** of Details conducted by a Member Party is **[*]** for such Calendar Quarter (such **[*]** being a **[*]** "), such Member Party may **[*]** of Details it conducts **[*]** , if any, during the **[*]** , and in **[*]** , in each case in order to **[*]** some or all of the **[*]** . Subject to Section 5.1(g), if, in any Calendar Year, the **[*]** of Details conducted by a Member Party is **[*]** the **[*]** for such Calendar Year (such **[*]** being a **[*]**), then notwithstanding anything in this Agreement to the contrary, (i) the other Member Party shall **[*]** to such **[*]** , and (ii) any failure by a Member to comply with this Section 5.1(f) which results in such **[*]** shall not be subject to the **[*]** .

(g) If, during any Calendar Quarter, a Member Party expects that it will experience a **[*]** for the succeeding Calendar Quarter (or part thereof), it shall inform the other Member Party of the anticipated **[*]** by written notice as promptly as practicable but no later than the due date of the report referred to in Section 5.1(e). The other Member Party shall have the right to **[*]** in such succeeding Calendar Quarter (or part thereof) by up to the anticipated **[*]** for such succeeding Calendar Quarter (or part thereof) by giving notice to the first Member Party of its intent to do so within **[*]** of receiving the notice. For the avoidance of doubt, if the other Member Party gives such notice and so **[*]** , the first Member Party shall **[*]** to the other Member Party an amount equal to the product of **[*]** multiplied by the **[*]** multiplied by the **[*]** . In any such case, the **[*]** of the **[*]** , if any, under **[*]** shall be **[*]** .

5.2 Distribution Obligations .

(a) Gilead shall have the sole responsibility and right to fill orders with respect to the Combination Product on behalf of the JV. If for any reason BMS receives sales orders for the Combination Product, it shall promptly forward such order to Gilead. An order for the Combination Product may be rejected by Gilead only if such rejection is commercially reasonable under the circumstances. The JCC shall determine how the JV shall respond to requests from individual patients who have or may obtain prescriptions for the Combination Product but may be unable to afford it, and from health care providers on behalf of such patients, including, without limitation, establishing appropriate procedures and response times that shall apply in responding to such requests; provided , however , that the JCC shall

structure the applicable program in a manner that will make evident to such health care providers and patients the participation of the JV (and, as appropriate, each of its Member Parties) in such program and shall ensure that the procedures and response times are no less favorable to patients than the most favorable of either Member Party's patient assistance programs for its Single Agent Product(s) and/or Double Agent Product as of the Effective Date. The JCC shall review the arrangements for the patient assistance program annually and agree upon appropriate changes. Each Member Party may propose interim changes with respect thereto from time to time between such reviews, which changes the JCC shall adopt if failure to do so would be likely to have a material adverse effect on the Combination Product business.

(b) Without limitation of the foregoing, Gilead shall perform all the functions of a distributor with respect to sales of the Combination Product on behalf of the JV, including, without limitation, inventory management and control, warehousing and distribution, invoicing, collection of sales proceeds, preparation of sales records and reports, customer relations and services, and handling of returns, in accordance with customary practice in the biopharmaceutical industry, pursuant to a separate Services Agreement to be entered into by the Parties within **[*]** of the Effective Date substantially on the terms outlined in Annex P.

(c) Gilead's relationships with wholesale distributors for the Combination Product shall be governed by inventory management agreements to reduce inventory fluctuations to the extent commercially feasible, and if such agreements do not also cover Gilead's other products in the Field, they shall be commercially reasonable and **[*]** . For any **[*]** in respect of **[*]** relating thereto, Gilead shall ensure either that (i) such **[*]** are **[*]** for **[*]** on a **[*]** as for **[*]** , or (ii) if such **[*]** are not **[*]** on a **[*]** basis, such **[*]** are **[*]** among **[*]** . Gilead shall use Commercially Reasonable Efforts to keep inventory levels of the Combination Product at wholesale distributors at **[*]** , subject to fluctuations expected during the Launch period for the Combination Product.

5.3 Pricing of Combination Product .

(a) Gilead shall have sole responsibility to act as agent for selling the Combination Product on behalf of the JV at prices that **[*]** with the **[*]** (as defined below) made pursuant to the provisions of this Section 5.3 and the **[*]** set forth on Annex Q (the " **[*]** ").

(b) Gilead and BMS shall each appoint two (2) members of a pricing committee for the JV (the "Pricing Committee"). One (1) representative from each Member Party (the " **[*]** Representative") shall be an employee of that Member Party who is not at the time of his or her appointment, or at any time during his or her service on the Pricing Committee, otherwise involved, directly or indirectly, in the **[*]** of such Member Party's (or any of its Affiliates') **[*]** (provided, that for purposes of this Section 5.3, duties solely with respect to accounts receivable analysis, bookkeeping and accounting shall not, without more, be deemed involvement in **[*]**). Such representatives shall have skills reasonably appropriate to their responsibilities and functions as members of the Pricing Committee. The other representative from each Member Party (the " **[*]** Representative") shall be **[*]** for that Member Party. Furthermore, each Member Party covenants that, for **[*]** immediately after an individual's service on the Pricing Committee (or for such shorter period as he or she is employed by such Member Party or its Affiliate), he or she will not be assigned to a function or position that

involves, directly or indirectly, the pricing of such Member Party's (or any of its Affiliates') **[*]** products. Each Member Party shall have the right to approve the other Member Party's proposed **[*]** Representative and **[*]** Representative on the Pricing Committee (or any replacement therefor), which approval shall not be unreasonably withheld. Subject to the preceding sentence, each Member Party shall have the right to replace its **[*]** Representative and/or **[*]** Representative from time to time during the term of this Agreement, provided that the composition of the Pricing Committee as so changed meets the requirements set forth above in this Section 5.3(b). For the avoidance of doubt, the Pricing Committee is not an Operating Committee of the JV and, accordingly, references in this Agreement, the Operating Agreement and, if applicable, any Ancillary Agreement to an Operating Committee shall not apply to the Pricing Committee. The Pricing Committee may determine in its sole discretion to retain independent legal counsel, in which case the expenses of such counsel shall be deemed to be Authorized Other Expenses.

(c) Gilead and BMS shall each be responsible for the performance of its representatives on the Pricing Committee and their compliance with the terms of this Section 5.3 and the **[*]** . Any issue regarding the **[*]** of the Pricing Committee shall be reviewed **[*]** Gilead and BMS shall each bear their own expenses related to the Pricing Committee, including without limitation all expenses relating to the meetings of the Pricing Committee, the participation of the Member Parties' representatives in such meetings, communications with the other Member Party in connection with such meetings or matters within the authority of the Pricing Committee, and travel to and from such meetings, and such expenses shall not be deemed JV Expenses or Authorized Other Expenses.

(d) The Pricing Committee shall be responsible, on an ongoing basis, for **[*]** Gilead, as agent of the JV **[*]** , (i) the **[*]** in accordance with this Section 5.3 and the **[*]** (the " **[*]** ") and (ii) any **[*]** (" **[*]** ") as **[*]** according to the **[*]** with respect to **[*]** (as defined in the **[*]**) from the JV. The Pricing Committee shall meet at least quarterly (which meeting may be conducted by telephone or videoconference equipment, so long as each attendee is able to hear the others), and as otherwise required from time to time, to **[*]** . The **[*]** will serve as **[*]** , as applicable, in **[*]** Gilead, as agent of the JV, and **[*]** . Gilead, as agent of the JV, shall have no authority to **[*]** , as the case may be, for **[*]** .

(e) Should interpretation of the **[*]** become necessary, the **[*]** Representatives on the Pricing Committee shall discuss the matter with the **[*]** Representatives and attempt to resolve the matter by consensus. In the event that a consensus cannot be reached, no **[*]** with respect to **[*]** and Gilead, as agent of the JV, shall not **[*]** .

(f) The functional role of each representative on the Pricing Committee shall be limited to:

(i) coordinating with Gilead, as agent of the JV, to ascertain **[*]** ;

(ii) on an as-needed basis, providing the Pricing Committee the **[*]** , as the case may be;

(iii) only on an as-needed basis, and as specifically requested with respect to **[*]** , providing the Pricing Committee such other specifically limited **[*]** pertinent to **[*]** , as the **[*]** Representatives shall agree is necessary and appropriate;

(iv) applying the **[*]** to **[*]** with respect to **[*]** ; and

(v) ensuring that the **[*]** for the Combination Product, as **[*]** , is **[*]** , as the case may be, for **[*]** .

(g) Either Member Party (the "Requesting Member") may, upon written notice to the other Member Party, cause the Independent Accounting Expert (selected pursuant to Section 7.1(d)) to confirm the accuracy, with respect to any **[*]** , of (i) any **[*]** and/or (ii) any **[*]** the Pricing Committee, including, without limitation, the **[*]** , as the case may be. In such case, each Member Party and the Pricing Committee shall cooperate with the Independent Accounting Expert and (upon the Independent Accounting Expert's entry into an appropriate confidentiality agreement) provide him or her with the data necessary to make the requisite calculations. Further, upon the written request of either Member Party, the calculations of the Independent Accounting Expert shall be audited by a second Third Party mutually agreed by the Member Parties. The Independent Accounting Expert and the Third Party auditor, if any, shall notify the JEC of their respective determinations, which notifications shall not contain any information provided to such Independent Accounting Expert (and/or such Third Party auditor) by either Member Party. The calculations made by the Independent Accounting Expert pursuant to this Section 5.3(g) shall be binding upon the Pricing Committee and the Parties; provided , however , that in the event that a Third Party auditor identifies a discrepancy in the Independent Accounting Expert's calculations, the Member Parties shall cause the Independent Accounting Expert and such Third Party auditor to confer and agree upon the final calculations and advise the Member Parties in writing of same, whereupon such final agreed calculations shall be binding on the Parties. The Requesting Member shall bear the fees and costs of the Independent Accounting Expert in connection with its confirmation of the accuracy of such determination and/or information, unless the Independent Accounting Expert finds a discrepancy equal to or greater than **[*]** therein, in which case the JV (in the case of a discrepancy in a **[*]**) or the other Member Party (in the case of a discrepancy in **[*]**), shall bear such fees and costs. Nothing in this Section 5.3(g) shall be deemed to limit any remedy available to either Member Party in the event of a breach of any of the provisions of this Section 5.3 or the **[*]** by the other Member Party. Notwithstanding anything in this Agreement to the contrary, such breach shall not be subject to the cure provisions set forth in Section 14.4.

(h) All information provided to the Pricing Committee ("Pricing Information") shall be considered Confidential Information of the disclosing Member Party and shall be used solely for the purpose of **[*]** and for no other purpose. For the avoidance of doubt, the exceptions to confidentiality set forth in Section 12.2 (other than in Sections 12.2(a) and (b)) shall not apply to Pricing Information. Except as expressly permitted by the **[*]** , Pricing Information shall not be disclosed by the Pricing Committee representatives except to counsel, the Independent Accounting Expert, or any Third Party auditor selected pursuant to Section 5.3(g). All Pricing Information shall be **[*]** maintained by the Pricing Committee, which **[*]** shall not be accessible by Persons other than the members of the Pricing Committee. Without limiting the foregoing, each of BMS and Gilead shall:

(i) cause its representatives on the Pricing Committee not to disclose to any other Person **[*]** ; and

(ii) not reference or use, directly or indirectly, any information from the Pricing Committee **[*]** .

(i) Prior to the Launch of the Combination Product and thereafter annually, the JEC shall review the **[*]** (as most recently modified pursuant to this Section 5.3(i), if applicable) in light of the then-prevailing market conditions and JV marketing and sales strategies. If appropriate, the JEC shall recommend to the Member Parties changes to the **[*]** . The JEC's action or inaction under this Section 5.3(i) shall not be subject to arbitration. If (and only if) Gilead and BMS mutually agree on any such changes proposed by the JEC, then the **[*]** as so changed shall be deemed to be the " **[*]** " hereunder.

(j) Gilead and BMS shall each retain sole discretion with respect to price-setting and discounts for its respective Single Agent Products and Double Agent Product, if any. Notwithstanding the foregoing, each Member Party covenants that it shall **[*]** and shall not directly or indirectly **[*]** of **[*]** solely or primarily for the purpose of **[*]** .

5.4 National Accounts . Gilead shall have sole responsibility to act as agent for conducting all pricing activities on behalf of the JV relating to governmental organizations, AIDS Drug Assistance Programs, correctional facilities and systems, managed care organizations and all other national accounts in all payor segments in the Territory, including without limitation contract strategy and contract creation. Such activities shall be further defined in the Commercialization Plan and shall comply with Section 5.3 and the **[*]** . Except with respect to pricing activities, BMS shall share in the Commercialization Activities in correctional facilities and systems and other national accounts.

5.5 Performance; Subcontracting . Gilead and BMS each shall comply, and shall cause its Affiliates to comply, with all Applicable Laws, regulations and Approvals in conducting their respective Commercialization Activities. Either Member Party may subcontract the performance of Commercialization Activities allocated to it under the Commercialization Plan; provided , however , that the subcontracting Member Party shall oversee the performance by its subcontractors of such subcontracted Commercialization Activities in a manner that would be reasonably expected to result in their timely and successful completion and shall remain responsible for the performance of such Commercialization Activities in accordance with this Agreement and the Commercialization Plan; and, provided , further , that neither Gilead nor BMS may engage any subcontractor, including, without limitation, any contract sales organization, to perform any Details of the Combination Product.

5.6 Conflict Avoidance . Gilead and BMS each agrees to ensure that, during the Initial Launch Period, none of its Field Force employees who engages in the Marketing of the Combination Product shall also market any **[*]** which **[*]** , any **[*]** that is **[*]** in the Territory as of **[*]** , or any **[*]** that is **[*]** in the Territory as of **[*]** .

5.7 Marketing Materials .

(a) The JCC shall develop and approve an initial set of advertising and promotional materials for the Combination Product. If the JCC cannot reach agreement with respect to such materials, the JEC shall attempt to resolve any disputed issues relating to the materials. In the event that the JCC or, following a dispute within the JCC, the JEC shall reach agreement with respect to such materials (as modified from time to time pursuant to this Section 5.7, the "Approved Marketing Materials"), then subject to subparagraph (b) below, each Member Party shall use the Approved Marketing Materials (and only the Approved Marketing Materials, together with the FDA-approved product label and the package insert) in Promoting the Combination Product in the Territory for at least the first twelve months following the Launch. If each of the JCC and the JEC is unable to reach agreement on such materials, then the Member Parties shall Promote the Combination Product in the Territory using only the FDA-approved product label and the package insert for the Combination Product.

(b) Each Member Party may propose interim updates to the Approved Marketing Materials from time to time, independent of the annual reviews conducted pursuant to Section 5.7(c). The JCC shall be required to consider, and shall adopt, such updates only if they satisfy the following conditions: (i) the update is based on relevant new scientific, medical or clinical data, relevant new regulatory or legal developments, or changes to the FDA-approved label or package insert for the Combination Product; and (ii) in the absence of such update, the use of the Approved Marketing Materials would not comply with Applicable Law (any update satisfying such conditions, a "Required Update").

(c) Approximately **[*]** after the Launch, the JCC shall review and, if appropriate, update the Approved Marketing Materials, if any. Such updates shall include, at a minimum, any Required Updates. If the JCC cannot reach agreement on a Required Update proposed by a Member Party, then the matter shall be subject to dispute resolution under Section 2.8. In the event that neither the JCC nor the JEC is able to reach agreement on a proposed Required Update, and after **[*]** relating to Required Updates, each Member Party may elect upon written notice to the other Member Party to Promote the Combination Product in the Territory using either (i) only the FDA-approved product label and the package insert or (ii) the Approved Marketing Materials as modified to reflect any Required Updates **[*]** .

(d) In connection with the review conducted pursuant to Section 5.7(c), the JCC may make other appropriate changes arising from business or other considerations (each, an "Optional Update") as proposed by a Member Party. In the event that the JCC cannot reach agreement on any proposed Optional Update, then the dispute shall be subject to dispute resolution under Section 2.8; provided , however , that **[*]** to **[*]** . In the event that neither the JCC nor the JEC is able to reach agreement on a proposed Optional Update, each Member Party may elect upon written notice to the other Member Party to Promote the Combination Product in the Territory using either (i) only the FDA-approved product label and the package insert or (ii) the Approved Marketing Materials without such Optional Update.

(e) After the review conducted pursuant to Section 5.7(c), the JCC shall review the most recent Revised Marketing Materials on an annual basis, and shall make Required Updates and consider any Optional Updates proposed by a Member Party. Any disputes within the JCC relating to such updates shall be resolved using the procedures set forth in Sections 5.7(c) and 5.7(d).

(f) The JV shall own all rights, title and interest in and to such Approved Marketing Materials. Notwithstanding anything in this Agreement to the contrary, neither Member Party shall use in the Promotion of the Combination Product in the Territory materials other than the FDA-approved product label and inserts and the Approved Marketing Materials. The JCC shall select for the Marketing of the Combination Product an advertising agency or agencies, and the JV shall retain such agency or agencies on commercially reasonable terms. The JCC shall also develop, implement and oversee an orderly, systematic process, involving representatives from the legal, medical and regulatory functions of the respective Member Parties, for the review and approval of all such advertising and promotional materials. In any interactions with FDA, the allocation of the Member Parties' rights and responsibilities shall be as set forth in Section 3.4.

5.8 Development and Use of Trademarks . The JCC shall select all Combination Product Trademarks, which shall be owned by the JV. Subject to Applicable Law, the JV shall include a Trademark and the name of each of Gilead Parent and BMS Parent on the labeling, packaging and advertising materials for the Combination Product in the Territory. The JV shall comply with all notice and marking requirements of applicable intellectual property law for the protection and enforcement of the Trademarks of the JV, Gilead and BMS, unless such notice and marking requirements are not commercially reasonable under the circumstances.

5.9 Insurance . The Member Parties agree that the JV will **[*]** . Further, neither Member Party shall have any obligation to **[*]** . In the event that either Member Party elects to **[*]** arising out of the Exploitation of the Combination Product, the Member Party **[*]** shall have the sole right to **[*]** . For the avoidance of doubt, nothing contained in this Section 5.9 is intended, or shall be construed, to limit a Member Party's (or the JV's) indemnity obligations pursuant to Section 13.

5.10 Records .

(a) Maintenance of Records . Gilead and BMS each shall severally (in accordance with their respective allocations of responsibility with respect to Project Activities) maintain and retain, or cause to be maintained and retained, final records (but not draft records or documents except as otherwise required by Applicable Law) of its respective Commercialization Activities covered in the Commercialization Plan for at least (i) three (3) years or (ii) such longer period as may be required by Applicable Law.

(b) Access to Records . Subject to this Section 5.10(b), each Member Party shall have the right, with respect to records maintained by the other Member Party of such other Member Party's Commercialization Activities covered in the Commercialization Plan, during normal business hours and upon reasonable notice, to inspect and copy any such records solely to the extent relating to the Combination Product and solely to the extent (i) necessary in order for the receiving Member Party to perform its obligations with respect to Commercialization Activities in a manner consistent with the Commercialization Plan, (ii) necessary for the receiving Member Party to confirm compliance with and/or to comply with GLP, GCP and GMP (to the extent applicable), and other Applicable Law, as it relates to Project Activities, and/or (iii) necessary to enable the receiving Member Party to conduct reasonable diligence on matters potentially giving rise to liability on the part of the JV and/or such receiving

Member Party, or to conduct a defense of itself and/or the JV with respect to any such liability, if and to the extent that a fact, circumstance or event has arisen that gives the receiving Member Party a reasonable basis to believe that it or the JV has or may incur such liability, in each case for use by the receiving Member Party for the purpose set forth in clause (i), (ii) or (iii) above, as the case may be. Clause (iii) of the immediately preceding sentence shall not require any Party to provide such data, documentation or records in the event that the Parties' interests in such matter are or may be **[*]** , in which case **[*]** shall apply. Each such request shall be made in writing and shall state the reason(s) therefore (each a "Commercial Record Request"). The Member Party from which such records, documentation or data are requested shall have the right to raise reasonable objections in writing in response to such Commercial Record Request, including, without limitation, based on such Member Party's interests in protecting from disclosure to the requesting Member Party trade secrets or other competitive business information. Upon any such objection being asserted, the Member Parties shall promptly confer in an attempt to address each Member Party's concerns and reach a resolution with respect to the matter, and in the event that the Member Parties are unable to agree upon a mutually agreeable resolution, either Member Party shall have the right to refer the matter to the JCC. In the event that any such dispute is ultimately **[*]** determine as a threshold matter whether and to what extent one or more criteria set forth in clauses (i), (ii) and/or (iii) above have been satisfied by the requesting Member Party, and, if so, shall make a determination with respect to whether and to what extent the disclosure of such information shall be required, by **[*]** , and **[*]** . In making such determination, **[*]** to the facts and arguments set forth in the Commercial Record Request and the other Member Party's written response thereto, and (y) have the right to require the receiving Member Party to abide by terms and conditions for the handling, use and non-disclosure (either within such Member Party's organization and/or to Third Parties) of such information as may be reasonable under the circumstances. Except as provided in this Section 5.10, a Member Party shall not have the right to obtain from the other Member Party access to or copies of the other Member Party's records, documentation and data described above, unless otherwise expressly permitted pursuant to this Agreement or the other Member Party gives its consent in its sole discretion. Notwithstanding the foregoing, neither Member Party shall have any obligation to (and, with respect to pricing and discounting matters as set forth in Section 5.3, neither Member Party shall) provide to the other Member Party any such information to the extent it relates to price setting and discounting, or inventory management agreements, or which such first Member Party is restricted from disclosing pursuant to Applicable Law or confidentiality or other contractual arrangements with Third Parties.

5.11 Commercialization Plan and Budget .

(a) The Commercialization Plan shall cover only activities for commercialization of the Combination Product in the Territory that shall be conducted by a single Member Party or that must be coordinated between the Member Parties, which activities shall conform to the Collaboration Principles and the provisions of this Section 5.

(b) The initial Commercialization Plan attached hereto as Annex C covers the period from the Effective Date through the Initial Launch Period. Each Commercialization Plan and update shall contain a budget for each Member Party's out-of-pocket expenses for such Member Party's activities set forth therein (each, a "Commercialization Budget"). The initial Commercialization Plan covers (i) the **[*]** by each Member Party in the

Territory **[*]** for the Initial Launch Period, (ii) **[*]** for the Combination Product for the Initial Launch Period, and (iii) certain other Marketing and other commercialization activities for the Combination Product that are required to be conducted by a single Member Party or that must be coordinated between the Member Parties; provided, however, that within **[*]** after the Effective Date, the Member Parties shall (x) supplement the initial Commercialization Plan in order to assign to the Member Parties their respective responsibilities for executing activities referred to in clause (iii) above and (y) revise the initial Commercialization Plan and Commercialization Budget so that the amounts set forth in Annex C with respect to the period from the Effective Date to the commencement of the Initial Launch Period are reported on a Calendar Year/Calendar Quarter basis reflecting the timing of such amounts as contemplated by Annex C. Updates of the Commercialization Plan shall not cover or include any activities not covered by the initial Commercialization Plan unless mutually agreed by the Member Parties.

(c) Not less than **[*]** prior to the proposed date of filing for Approval of an NDA for the Combination Product in the Territory, the Member Parties shall revise the then-current Commercialization Plan and Commercialization Budget so that the amounts set forth therein with respect to the Initial Launch Period are reported on a Calendar Year/Calendar Quarter basis reflecting the timing of such amounts as contemplated by the then-current Commercialization Plan and Commercialization Budget. The responsible Member Party (as determined below) shall prepare and submit to each of the JCC and JFC (i) not less than **[*]** prior to the start of each Calendar Year, a proposed update to the Commercialization Plan and the Commercialization Budget for such Calendar Year and (ii) not less than **[*]** prior to the start of each Calendar Year, a preliminary update to such Commercialization Budget (which may address budget issues at a general level, may be incomplete and is subject to change). Following review, discussion and revision of such proposed update, the JCC shall vote upon such update at least **[*]** prior to the start of the applicable Calendar Year. BMS shall prepare the first such annual update; thereafter, such responsibility shall rotate between BMS and Gilead on a year-to-year basis, on the same annual schedule as for the first update, through the Calendar Year in which the Subsequent Launch Period ends (or for such longer period as may be agreed by the Member Parties). In addition, either Member Party, directly or through its representatives on the JCC, may propose interim updates to the Commercialization Plan and the Commercialization Budget to the JCC from time to time as appropriate in light of changed circumstances. Such annual and interim updates for periods commencing with Calendar Years through the one containing the end of the Subsequent Launch Period shall be approved by the JCC as set forth in Section 2.4(b)(ii). Subject to Sections 2.2(vi) and 2.10, if a proposed update to the Commercialization Plan or Commercialization Budget is not approved by the JEC or JCC as applicable, then the Commercialization Plan or Commercialization Budget, as the case may be, shall continue in effect as approved and most recently updated pursuant to this Section 5.11(c).

5.12 Commercialization Expenses . The Parties agree that the JV shall bear all JV Expenses incurred by each of Gilead and BMS in connection with the performance of its respective Commercialization Activities to the extent that they meet all of the following criteria ("Authorized Commercialization Expenses"): (a) such Commercialization Activities are covered in and consistent with the Commercialization Plan and are within an area of responsibility for the relevant Member Party listed in the Commercialization Budget as being chargeable to the JV; (b) the total expenses for that Member Party's designated activities under the Commercialization Plan for the relevant period to the extent that they do not exceed the aggregate amount set forth

in the Commercialization Budget for such activities in that period by more than **[*]** ; (c) the expenses are external, out-of-pocket costs of Gilead or BMS, without any markup, and not internal costs, including, without limitation, internal costs incurred in **[*]** ; and (d) the relevant Commercialization Activities are for the Marketing of the Combination Product only and not for the Marketing of any other proprietary products of Gilead or BMS. Notwithstanding the limitation contained in clause (d) above, in the event that either Member Party reasonably believes that there are cost or other efficiencies that the JV can reasonably be expected to achieve through one or both Member Parties' conducting Commercialization Activities with respect to the Combination Product as part of, or in coordination with, activities being conducted by one or both Member Parties with respect to its or their Single Agent Product(s) and/or Double Agent Product, such Member Party(ies) may propose, by and through its JCC member(s), that such activities be coordinated and an appropriate and reasonable allocation of the related costs be made between the Combination Product, on the one hand, and such other product or products, on the other hand, and that the amount allocated to the Combination Product be treated as Authorized Commercialization Expenses (each such proposal, a "Cost Allocation Proposal"). If, and only to the extent that, such Cost Allocation Proposal is reviewed by the JFC and JCC pursuant to Sections 2.5(b)(vii) and 2.4(b)(viii), respectively, and approved by the JEC pursuant to Section 2.2(ix) (with any modifications made by the JEC), the amount approved by the JEC for allocation to the Combination Product (any such approved costs, "Allocated Costs") shall constitute Authorized Commercialization Expenses.

5.13 Reports . Gilead and BMS shall each present to the other, at a meeting of the JCC at least once per Calendar Quarter until the second anniversary of the Launch of the Combination Product, and, thereafter, at a meeting of the JCC, at least semiannually, a report (oral and written, which written report shall not be required to contain more detail than that typically included in an executive summary) describing (i) the Commercialization Activities it has performed, or caused to be performed, since the preceding meeting at which such a report was presented (or, in the case of the first meeting of the JCC, prior to such meeting) and on a Calendar Year-to date basis, evaluating the work performed in relation to the goals and timeline of the Commercialization Plan, (ii) its Commercialization Activities in process and the future activities it expects to initiate during the then-current Calendar Year, as compared to the Commercialization Plan, and (iii) in the case of the written report the Authorized Commercialization Expenses incurred, and expected to be incurred, by such Member Party for the then-current Calendar Year, as compared to the Commercialization Budget (if applicable). In addition, Gilead and BMS shall report promptly to the JCC through their respective committee members any material developments with respect to Commercialization Activities that they are responsible for performing under the Commercialization Plan. Notwithstanding anything contained in this Section 5.13 to the contrary, each Member Party's reporting obligations under this Section 5.13 shall automatically be deemed to terminate with respect to any period in which there is not then in effect a Commercialization Plan and/or a Commercialization Budget.

SECTION 6.
LICENSE GRANTS

6.1 Technology Licenses by Member Parties to the JV .

(a) Subject to the terms and conditions of this Agreement, Gilead hereby grants to the JV a sole, royalty-free license (which license shall be exclusive as to BMS, its Affiliates and all Third Parties but not as to Gilead and its Affiliates), with the right to grant sublicenses solely as set forth in Sections 6.2(a) and (c) or pursuant to Section 6.4, under the Gilead Technology only to Exploit the Combination Product (but not to make or have made the active pharmaceutical ingredients thereof or otherwise to Exploit the active pharmaceutical ingredients thereof individually or in combination other than in the Combination Product) worldwide.

(b) Subject to the terms and conditions of this Agreement, BMS hereby grants to the JV a sole, royalty-free license (which license shall be exclusive as to Gilead, its Affiliates and all Third Parties but not as to BMS and its Affiliates), with the right to grant sublicenses solely as set forth in Sections 6.2(a) and (c) or pursuant to Section 6.4, under the BMS Technology only to Exploit the Combination Product (but not to make or have made the active pharmaceutical ingredients thereof or otherwise to Exploit the active pharmaceutical ingredients thereof individually or in combination other than in the Combination Product) in the Applicable EFV Territory.

6.2 Licenses and Sublicenses by the JV to Member Parties . Subject to the terms and conditions of this Agreement, the JV hereby grants the following licenses and sublicenses:

(a) to Gilead, (1) a non-exclusive, royalty-free sublicense, without the right to grant further sublicenses under the license granted to the JV in Section 6.1(b), (2) a non-exclusive, royalty-free license, without the right to grant sublicenses, under the Joint Technology and Joint Inventions, and any and all rights, title and interest that the JV may have in and to any Gilead Core Improvement and Patents claiming such Improvement and (3) additionally, a perpetual, royalty-free, fully paid-up, irrevocable, exclusive (even as to the JV) license, with the right to grant sublicenses through multiple tiers, under any and all rights, title, and interest that the JV may have in and to any Gilead Core Improvement and Patents claiming such Improvement, in the case of clauses (1) and (2) only (i) to Exploit the Combination Product (but not to Exploit the EFV active pharmaceutical ingredient therein individually or in combination other than in the Combination Product) in the Territory; (ii) to conduct anywhere in the world Development Activities in support of Approvals for the Combination Product in the Territory; and (iii) to make and have made, and import into the Territory, Combination Product (but not to make or have made the EFV active pharmaceutical ingredient therein) for Exploitation in the Territory, in each case ((i), (ii) and (iii)) pursuant to and in accordance with this Agreement, including, without limitation, performance of Gilead's obligations under the Development Plan and the Commercialization Plan, and, in the case of clause (3) only, to Exploit such Improvement worldwide only with respect to products containing TDF or FTC as an active pharmaceutical ingredient, whether alone or in combination with one or more other active pharmaceutical ingredients (excluding EFV and other proprietary BMS active pharmaceutical ingredients);

(b) to BMS, (1) a non-exclusive, royalty-free sublicense, without the right to grant further sublicenses under the license granted to the JV in Section 6.1(a), (2) a non-exclusive, royalty-free license, without the right to grant sublicenses, under the Joint Technology and Joint Inventions, and any and all rights, title, and interest that the JV may have in and to any

BMS Core Improvement and Patents claiming such Improvement and (3) additionally, a perpetual, royalty-free, fully paid-up, irrevocable, exclusive (even as to the JV) license, with the right to grant sublicenses through multiple tiers, under any and all rights, title, and interest that the JV may have in and to any BMS Core Improvement and Patents claiming such Improvement, in the case of clauses (1) and (2) only (i) to Exploit the Combination Product (but not to Exploit the TDF or FTC active pharmaceutical ingredients therein individually or in combination other than in the Combination Product) in the Territory; (ii) to conduct anywhere in the world Development Activities in support of Approvals for the Combination Product in the Territory; and (iii) to make and have made, and import into the Territory, Combination Product (but not to make or have made the TDF or FTC active pharmaceutical ingredients therein) for Exploitation in the Territory, in each case ((i), (ii) and (iii)) pursuant to and in accordance with this Agreement, including, without limitation, performance of BMS' obligations under the Development Plan and the Commercialization Plan, and, in the case of clause (3) only, to Exploit such Improvement in the EFV License Agreement Territory only with respect to products containing EFV as an active pharmaceutical ingredient, whether alone or in combination with one or more other active pharmaceutical ingredients (excluding TDF, FTC and other proprietary Gilead pharmaceutical ingredients);

(c) to each of Gilead and BMS, a perpetual, non-exclusive, royalty-free license, with the right to grant sublicenses through multiple tiers, under the Joint Technology and Joint Inventions (including, without limitation, Joint Know-How consisting of Clinical Data and other Relevant Experience Information, CMC Data and Finished Product Manufacturing Data), only to Exploit on a worldwide basis (in the case of Gilead) or in the EFV License Agreement Territory (in the case of BMS), (i) such Member Party's Single Agent Product(s) and Double Agent Product, as the case may be, and (ii) other pharmaceutical compounds and products (other than the Combination Product), in each case ((i) and (ii)) whether alone or in combination with other agents; and

(d) to Gilead, an exclusive, royalty-free, with the right to grant sublicenses through multiple tiers, under the license granted to the JV in Sections 6.1(a) and (b) and under the Joint Technology and Joint Inventions (including, without limitation, Joint Know-How consisting of Clinical Data and other Relevant Experience Information, CMC Data and Finished Product Manufacturing Data) and any and all rights, title and interest that the JV may have in and to any Gilead Core Improvement and Patents claiming such Improvement, (1) to Exploit the Combination Product (but not to Exploit the active pharmaceutical ingredients thereof individually or in combination other than in the Combination Product) worldwide (except in the Territory, Canada and Europe), (2) to conduct anywhere in the world development activities in support of Approvals for the Combination Product worldwide (other than Approvals in the Territory, Canada and Europe), and (3) to make and have made anywhere in the world, and import anywhere in the world, Combination Product (but not to make or have made the active pharmaceutical ingredients thereof individually or in combination other than in the Combination Product) for Exploitation worldwide (other than Exploitation in the Territory, Canada and Europe), with such license to continue in effect so long as, and only so long as, Gilead is not in material breach of the conditions set forth in the following clauses (i) through (v) of this Section 6.2(d), subject to the last sentence of this Section 6.2(d):

(i) Gilead shall use all commercially reasonable efforts to obtain for BMS appropriate and legally permissible public recognition for BMS' role in enabling access to the Combination Product in the Developing World, which may include any or all of the following, in order of preference: (A) inclusion of BMS as a licensor and, if applicable, manufacturer, on the packaging and label of Combination Product sold or provided for use in the Developing World, (B) acknowledgement of BMS as a licensor and, if applicable, manufacturer or supplier of EFV, in press releases and other public announcements relating to provision of Combination Product for the Developing World, and (C) acknowledgement of BMS as a licensor and, if applicable, manufacturer or supplier of EFV, in any websites maintained by or through the cooperation of Gilead specifically to promote or enable provision of Combination Product for the Developing World; provided, however, that the Parties acknowledge that Gilead cannot ensure that any required Third Party or Regulatory Authority consents or approvals for such recognition can be obtained.

(ii) Except as provided in Section 6.9(a), Gilead shall not cause the sale by the JV of the Combination Product for use or sale outside the Territory.

(iii) Without BMS' prior written consent, not to be unreasonably withheld or delayed, Gilead shall not grant sublicenses under the license granted to it in this Section 6.2(d) to, or utilize for Manufacture of Combination Product, any Person other than one who has contracted for Manufacture and supply of tableted Combination Product with BMS, one of its Affiliates, or a joint venture or similar entity in which BMS has an ownership interest, or any Person acting on behalf of any of the foregoing.

(iv) In the event that Gilead Exploits the Combination Product outside the Territory, Canada and Europe pursuant to the license granted to it in this Section 6.2(d), BMS agrees to perform any administrative or ministerial acts that may be reasonably necessary or useful in order to enable Gilead to satisfy its obligations under clauses (i) through (iii) above or to enable Gilead to exercise its rights under the license granted to it in this Section 6.2(d). Gilead agrees that, other than with BMS' consent, BMS shall have no additional obligations, including, without limitation, any obligation to incur additional expenses or obligations, as a result of such Exploitation, other than the following: BMS' obligations provided for in this Section 6.2(d); BMS' obligations pursuant to Section 6.9(a), the last sentence of Section 6.9(b) and the last sentence of Section 6.11; and BMS' obligations pursuant to Applicable Law and any separate agreements between the Member Parties (including, without limitation, if applicable, the BMS Supply Agreement).

(v) Gilead shall cause its sublicensees, if any, under this Section 6.2(d) to comply with the obligations of Gilead under clauses (i) through (iv) above, and any failure on the part of any such sublicensee to comply in any material respect with any such obligation of Gilead shall be deemed to be a failure on the part of Gilead to comply in such respect with such obligation.

If Gilead is in material breach of any of clauses (i) through (v) above, Gilead's license under this Section 6.2(d) shall not terminate unless and until BMS has given notice to Gilead of such breach and such breach remains uncured for sixty (60) days after Gilead's receipt of such notice or, if longer, such period as would reasonably be required to cure such breach provided that

Gilead is using commercially reasonable efforts to effect such cure. For clarity, a material breach of clauses (i) through (v) above shall not give rise to any rights of cure or of termination of this Agreement pursuant to Section 14.4 of this Agreement. The Parties acknowledge and agree that the remedy of specific performance set forth in Section 14.4(d) shall be available with respect to any material breach by Gilead of its obligations under this Section 6.2(d) or any material breach by BMS of its obligations under Section 6.2(d)(iv), Section 6.9 or Section 6.11.

6.3 Licenses and Rights of Reference Between Member Parties .

(a) Subject to the terms and conditions of this Agreement, Gilead hereby grants to BMS (1) a (A) non-exclusive Right of Reference in the EFV License Agreement Territory with respect to such Gilead Know-How as consists of Clinical Data and other Relevant Experience Information, and (B) non-exclusive, royalty-free, fully paid-up, irrevocable license, with the right to grant sublicenses through multiple tiers, to use such Gilead Know-How in the EFV License Agreement Territory, in each case ((A) and (B)) solely to the extent reasonably necessary to enable BMS to Exploit its Single Agent Product, whether alone or in combination with other agents (other than Gilead's Single Agent Product(s) or Double Agent Product), in the EFV License Agreement Territory in a manner consistent with the labeling and Approved Marketing Materials for the Combination Product, and (2) a perpetual, royalty-free, fully paid-up, irrevocable, exclusive (even as to Gilead and its Affiliates) license, with the right to grant sublicenses through multiple tiers, under any and all rights, title, and interest that Gilead and its Affiliates may have in and to any BMS Core Improvement and Patents claiming such Improvement, to Exploit such Improvement in the EFV License Agreement Territory only with respect to products containing EFV as an active pharmaceutical ingredient, whether alone or in combination with one or more other active pharmaceutical ingredients (excluding TDF, FTC and other proprietary Gilead pharmaceutical ingredients). For clarity, Gilead shall not be required to transfer any Gilead Know-How to BMS pursuant to Section 6.3(a)(1).

(b) Subject to the terms and conditions of this Agreement, BMS hereby grants to Gilead (1) a (A) worldwide, non-exclusive Right of Reference with respect to such BMS Know-How as consists of Clinical Data and other Relevant Experience Information, and (B) worldwide, non-exclusive, royalty-free, fully paid-up, irrevocable license, with the right to grant sublicenses through multiple tiers, to use such BMS Know-How, in each case ((A) and (B)) solely to the extent reasonably necessary to enable Gilead to Exploit its Single Agent Products or Double Agent Product as applicable, whether alone or in combination with other agents (other than BMS' Single Agent Product), in a manner consistent with the labeling and Approved Marketing Materials for the Combination Product, and (2) a perpetual, worldwide, royalty-free, fully paid-up, irrevocable, exclusive (even as to BMS and its Affiliates) license, with the right to grant sublicenses through multiple tiers, under any and all rights, title, and interest that BMS and its Affiliates may have in and to any Gilead Core Improvement and Patents claiming such Improvement, to Exploit such Improvement only with respect to products containing TDF or FTC as an active pharmaceutical ingredient, whether alone or in combination with one or more other active pharmaceutical ingredients (excluding EFV and other proprietary BMS active pharmaceutical ingredients). For clarity, BMS shall not be required to transfer any BMS Know-How to Gilead pursuant to Section 6.3(b)(1).

6.4 Rights of Reference to and from the JV and Related Matters .

(a) Subject to the terms and conditions of this Agreement, Gilead and BMS each hereby grants to the JV a non-exclusive Right of Reference in the Territory with regard to the Gilead Regulatory Documentation and the BMS Regulatory Documentation, respectively, for the purpose of the JV's securing, maintaining and updating Approvals and agrees to provide a signed statement to that effect in accordance with 21 C.F.R. § 314.50(g)(3).

(b) Subject to the terms and conditions of this Agreement, the JV hereby grants to BMS a non-exclusive Right of Reference in the Territory with regard to the Combination Product Regulatory Documentation, for the purpose of BMS' securing, maintaining and updating NDAs for Sustiva and any other of its products containing EFV, other than the Combination Product, and agrees to provide a signed statement to that effect in accordance with 21 C.F.R. § 314.50(g)(3).

(c) Subject to the terms and conditions of this Agreement, the JV hereby grants to Gilead a non-exclusive Right of Reference in the Territory with regard to the Combination Product Regulatory Documentation, for the purpose of Gilead's securing, maintaining and updating NDAs for Viread, Emtriva, Truvada, and any other of its products containing either or both of TDF and FTC, other than the Combination Product, and agrees to provide a signed statement to that effect in accordance with 21 C.F.R. § 314.50(g)(3).

(d) For so long as the license granted to Gilead in Section 6.2(d) remains in effect, (i) the JV shall (and the Members agree to cause the JV to) cooperate with Gilead to make the Combination Product Regulatory Documentation available to Gilead (including potentially through filing of an sNDA to the NDA as needed to change the Combination Product label or, if applicable, qualify a different presentation of the Combination Product for export, or granting a Right of Reference thereto) for use in securing approvals from the FDA for export of the Combination Product and for securing approvals from other Regulatory Authorities for use and sale outside of the Territory, Canada and Europe, (ii) BMS and the JV hereby grant to Gilead Rights of Reference, if any, in any country worldwide outside the Territory, Canada and Europe solely for purposes of filing for Approvals of the Combination Product in any such country, which Rights of Reference shall continue for so long as the license granted to Gilead in Section 6.2(d) remains in effect, and agree to perform any administrative or ministerial acts that may be reasonably necessary or useful in order to enable Gilead to avail itself of such Rights of Reference, and (iii) BMS and the JV shall permit Gilead or its designee to provide a copy of any or all of the Combination Product Regulatory Documentation or any data or information therein to Regulatory Authorities outside the Territory, Canada and Europe, shall permit Gilead to obtain and provide Certificates of Pharmaceutical Product for the Combination Product (as approved by the FDA or other Regulatory Authorities) for submissions to Regulatory Authorities outside of the Territory, Canada and Europe, and shall provide any documentation or consents necessary to effectuate such Rights of Reference or permit Gilead to take all the foregoing actions in this clause (ii) for the Combination Product Regulatory Documentation and such Combination Product Certificates of Pharmaceutical Product. For clarity, BMS' grants of rights under clauses (ii) and (iii) above shall not be construed as BMS' granting any right to Gilead under any or all BMS Technology anywhere outside the Applicable EFV Territory.

6.5 Other Sublicenses . In supply agreements with the Suppliers selected pursuant to Section 4.2, the JV shall have the right to grant such Suppliers a non-exclusive,

royalty-free, worldwide sublicense, without right to sublicense, under the Joint Technology and the licenses granted to the JV in Sections 6.1(a) and 6.1(b), for the sole purpose of Manufacturing the Combination Product (but not the active pharmaceutical ingredients thereof), for supply to the JV.

6.6 Trademark Licenses by Member Parties to the JV .

(a) Subject to the terms and conditions of this Agreement, Gilead hereby grants to the JV a non-exclusive, royalty-free, fully paid-up, license, with right to sublicense through multiple tiers, to use in the Territory (i) the Trademarks listed on Annex F hereto (the "Gilead Licensed Trademarks") for the sole purposes of Exploitation of the Combination Product (but not to Exploit the active pharmaceutical ingredients thereof individually or in combination other than in the Combination Product) in the Territory and (ii) Gilead Parent's name and company logo/identifiers, for use in the name of the JV, and/or on product labeling, product packaging, and promotional materials for the Combination Product pursuant to Section 5.8.

(b) Subject to the terms and conditions of this Agreement, BMS hereby grants to the JV a non-exclusive, royalty-free, fully paid-up, license, without right to sublicense, to use in the Territory (i) the Trademarks listed on Annex G hereto (the "BMS Licensed Trademarks") for the sole purposes of Exploitation of the Combination Product (but not to Exploit the active pharmaceutical ingredients thereof individually or in combination other than in the Combination Product) in the Territory and (ii) BMS Parent's name and company logo/identifiers, for use in the name of the JV, and/or on product labeling, product packaging, and promotional materials for the Combination Product pursuant to Section 5.8.

(c) Each of the Member Parties shall be responsible for determining and thereafter monitoring what steps, if any, it needs to take in order to satisfy itself that the JV's use of its Trademarks (i.e. the Gilead Licensed Trademarks or the BMS Licensed Trademarks, as the case may be), meets the commercially reasonable high quality standards, specifications, and instructions submitted or approved by Gilead or BMS, respectively, in connection with this Agreement.

(d) Gilead and the JV hereby recognize BMS' right, title, and interest in and to the BMS Licensed Trademarks. Gilead and the JV further recognize that this Agreement, or use of the BMS Licensed Trademarks in connection with this Agreement, in no way confers to Gilead or the JV any right, title, and interest in and to the BMS Licensed Trademarks or any other trademarks or intellectual property rights owned by BMS, except as may otherwise be expressly provided in this Agreement. BMS and the JV hereby recognize Gilead's right, title, and interest in and to the Gilead Licensed Trademarks. BMS and the JV further recognize that this Agreement, or use of the Gilead Licensed Trademarks in connection with this Agreement, in no way confers to BMS or the JV any right, title, and interest in and to the Gilead Licensed Trademarks or any other trademarks or intellectual property rights owned by Gilead, except as may otherwise be expressly provided in this Agreement.

(e) The JV acknowledges that (i) the goodwill generated by the JV's use of the Gilead Licensed Trademarks will inure solely to the benefit of Gilead; and (ii) the

goodwill generated by the JV's use of the BMS Licensed Trademarks will inure solely to the benefit of BMS.

6.7 Trademark License by the JV to Gilead .

(a) Subject to the terms and conditions of this Agreement, the JV hereby grants to Gilead a non-exclusive, royalty-free, fully paid-up license, in all countries and territories of the world excluding the Territory, Canada and Europe, with the right to sublicense through multiple tiers, to use Combination Product Trademarks for the sole purpose of Exploitation of the Combination Product (but not to Exploit the active pharmaceutical ingredients thereof individually or in combination other than in the Combination Product) in such countries and territories; provided , however , that this license shall remain in effect only so long as Gilead's license pursuant to Section 6.2(d) remains in effect.

(b) BMS and Gilead hereby recognize the JV's right, title, and interest in and to the Combination Product Trademarks. BMS and Gilead further recognize that this Agreement, or use of the Combination Product Trademarks in connection with this Agreement, in no way confers on BMS or Gilead any right, title, and interest in and to the Combination Product Trademarks on any other trademarks or intellectual property rights owned by the JV, except as may otherwise be expressly provided in this Agreement.

(c) BMS and Gilead acknowledge that the goodwill generated by their use of the Combination Product Trademarks will inure solely to the benefit of the JV.

6.8 Retained Rights . All license rights not specifically granted in this Section 6 are expressly reserved by each licensing Party. Any license granted in this Section 6 which is not sublicensable may be transferred or assigned by the licensee Party only in connection with a permitted assignment of this Agreement by such Party under Section 15.4.

6.9 Combination Product Sales for Outside the Territory, Canada and Europe .

(a) If so requested by Gilead, either or both of BMS and the JV (acting for these purposes through BMS representatives), as applicable, shall negotiate in good faith a commercially reasonable arrangement (taking into account relevant economic and market conditions in the relevant territories, e.g. should BMS become the supplier, a transfer price **[*]** of the Combination Product in territories where it would be supplied) to enable the supply of EFV active pharmaceutical ingredient for Manufacture of Combination Product (in the case of BMS, either Manufacturing or enabling a Third party to Manufacture such EFV active pharmaceutical ingredient) or of Combination Product (in the case of the JV), in each case sufficient to allow Gilead, its designee or the JV (as permitted under Section 6.9(b)), to sell or provide Combination Product for use both in the Developing World and in other territories outside the Territory, Canada and Europe, to meet the anticipated demand therefor in such countries.

(b) If requested by Gilead, and as permitted by applicable laws, rules and regulations, and consented to by BMS (such consent not to be unreasonably withheld or delayed), the Parties shall cooperate to enable and cause the JV to make the Combination Product available for export to, and use and sale in, the Developing World, including, without limitation, any sales within the Territory of Combination Product only for export, use or sale in

the Developing World. As part of these efforts, the Parties shall negotiate in good faith appropriate amendments to this Agreement and the Operating Agreement consistent with clauses (i) through (v) of Section 6.2(d) and Section 6.9(c).

(c) Other than payments in respect of any supply of EFV (if applicable) or Combination Product by BMS or the JV pursuant to Section 6.8(a), BMS and the JV shall not be entitled to any additional financial compensation, whether in the form of license fees, milestone payments, royalties or otherwise, either by reason of sales by the JV or other Persons authorized by Gilead, of Combination Product for use outside the Territory, Canada and Europe or by reason of the JV's grant of the license in Section 6.2(d).

6.10 Combination Product Sales for Europe . The Parties acknowledge and agree that the Combination Product shall be sold or otherwise commercially distributed in Europe only **[*]** to (and only if the **[*]** upon) one (1) or more **[*]** (and, if applicable, the **[*]**) covering **[*]** , unless such sale or distribution is commenced only after a **[*]** in **[*]** .

6.11 EFV License Agreement . Notwithstanding anything in this Agreement to the contrary, Gilead agrees to exercise the rights granted to it in Sections 6.2(d), 6.4(d) and 6.9(a) in the territories outside the EFV License Agreement Territory, only after reaching an agreement with the EFV Licensor if and as necessary for Gilead to avoid infringing or misappropriating the intellectual property rights of the EFV Licensor in such territories. If requested by Gilead, BMS shall cooperate with Gilead in its efforts to reach such an agreement.

6.12 JV Obligations as Sublicensee . The JV shall comply with all provisions applicable to sublicensees set forth in the EFV License Agreement (in the form provided by BMS to Gilead pursuant to Section 13.2(c)) and in the license agreements delivered by Gilead to BMS pursuant to the third sentence of Section 13.3(c) (in the form so delivered), respectively, including without limitation any such provisions with respect to reporting of information, record keeping and access to records for audit by the upstream licensor (but excluding any payment obligations or other matters for which a Member Party is responsible under Section 7.2). Such obligations as of the Effective Date are more specifically identified in Annex O. With respect to **[*]** with **[*]** referred to in Annex O (the **[*]**), **[*]** shall use commercially reasonable efforts to **[*]** after the Effective Date, the **[*]** to **[*]** grant of a sublicense to the JV under this Agreement as required by **[*]** (which **[*]** shall be in form and substance reasonably acceptable to **[*]**).

SECTION 7.
PAYMENTS AND THIRD PARTY ROYALTIES

7.1 Payments to Member Parties .

(a) In consideration of the supply by Gilead and BMS to the JV of quantities of their respective active pharmaceutical ingredients for manufacture of non-clinical supply of the Combination Product pursuant to Section 4.2(c) and their respective Supply Agreements (and in consideration of the provision of certain services hereunder), and subject to adjustment pursuant to Section 7.1(d), the JV shall pay to Gilead the "Gilead Transfer Price" and to BMS Sub the "BMS Transfer Price" in accordance with this Section 7. For a given Calendar Year, pursuant to this Section 7.1, the JFC shall calculate (i) interim Gilead Transfer Prices per kilogram of TDF or FTC bulk active pharmaceutical ingredient respectively, *i.e.* the applicable Transfer Price in accordance with Annex K hereto per kilogram of bulk active pharmaceutical ingredient (each an "Interim Gilead Unit Transfer Price") and (ii) an interim BMS Transfer Price per kilogram of EFV active pharmaceutical ingredient, *i.e.* the applicable Transfer Price in accordance with Annex K hereto per kilogram of EFV active pharmaceutical ingredient (the "Interim BMS Unit Transfer Price"), in each case based upon the respective Working Percentages calculated pursuant to Section 7.1(c)(i), the Estimated Net Selling Price of the Combination Product determined by the JFC with respect to such Calendar Year pursuant to Section 7.1(c)(ii), and the relevant Target Yield for the active pharmaceutical ingredient calculated pursuant to Annex K hereto. The JFC shall then inform Gilead and BMS of their respective Interim Unit Transfer Prices pursuant to Section 7.1(c)(iii). Subject to the last sentence of Section 7.3(c), each of Gilead and BMS Sub shall use its then-current Interim Unit Transfer Price(s) in preparing an invoice for each shipment of bulk active pharmaceutical ingredients it makes pursuant to Section 4.2(c) and its Supply Agreement.

(b) The Actual Gilead Percentage and the Actual BMS Percentage for a particular Calendar Year shall be equal to one hundred percent (100%) multiplied by a fraction, the denominator of which is the sum of the Net Selling Prices of Truvada and Sustiva in the Territory during the relevant Calendar Year, and the numerator of which is:

(i) for the Actual Gilead Percentage, the Net Selling Price of Truvada in the Territory during the relevant Calendar Year; and

(ii) for the Actual BMS Percentage, the Net Selling Price of Sustiva in the Territory during the relevant Calendar Year;

provided , however , that, without limitation of the obligations of the Member Parties under Section 5.3(j), for purposes of calculating the numerator and denominator of such fraction for both the Actual Gilead Percentage and the Actual BMS Percentage, any **[*]** in the Net Selling Price of Sustiva or Truvada for the relevant Calendar Year that **[*]** the **[*]** for the Calendar Year **[*]** shall be **[*]** and any such **[*]** shall not be **[*]** . In the event of a termination of this Agreement, the effective date of which falls on a date other than December 31 of a Calendar Year, the determination of the Actual Percentages shall be based on the period from January 1 of such Calendar Year through the effective date of termination, instead of the entire Calendar Year; and the provisions of this Agreement shall apply, mutatis mutandis , to such period.

(c) The JFC shall determine the Member Parties' Interim Unit Transfer Prices for each Calendar Year using the Member Parties' respective Working Percentages, the Estimated Net Selling Price and the Target Yield, as follows:

(i) On or before **[*]** , BMS and Gilead shall agree in writing on the Working BMS Percentage and the Working Gilead Percentage for Calendar Year 2005 (which shall be equal to their respective Actual Percentages for Calendar Year 2004 using the relevant data for Calendar Year 2004 inclusive). For each subsequent Calendar Year, the respective Working Percentages shall equal the Actual BMS Percentage and the Actual Gilead Percentage, respectively, for the immediately preceding Calendar Year; provided, however, that, with respect to any Calendar Year, pending determination of the Actual Percentages for the immediately preceding Calendar Year, the Working Percentages for such immediately preceding Calendar Year shall remain in effect until such time as the Actual Percentages for such immediately preceding Calendar Year have been determined. On or before **[*]** , BMS and Gilead shall agree in writing on the Target Yields for each of EFV, TDF and FTC for the Calendar Year 2005. For each subsequent Calendar Year, the relevant Target Yields for EFV, TDF and FTC shall be calculated pursuant to Section 7.1(d)(ii) and Annex K.

(ii) No later than **[*]** of each subsequent Calendar Year, the JFC shall determine the estimated Net Selling Price for the Combination Product for such Calendar Year using only historical data (such amount for each Calendar Year, the "Estimated Net Selling Price").

(iii) Using the Member Parties' respective Working Percentages, the Estimated Net Selling Price and the Target Yield for such Calendar Year, the JFC shall calculate each Member Party's Interim Unit Transfer Price(s) in accordance with Annex K and shall so notify the Member Parties in writing no later than **[*]** days after the first day of the applicable Calendar Year. From and after the date on which a Member Party receives a notice from the JFC with respect to such Member Party's respective Interim Unit Transfer Price(s) with respect to such Calendar Year, such amounts shall then be used by the Member Parties in invoicing the JV for the Transfer Price for shipments of bulk active pharmaceutical ingredients pursuant to Section 4.2(c) and the applicable Supply Agreement in such Calendar Year. Notwithstanding the foregoing, on a Calendar Quarter basis, the JFC shall recalculate the respective Interim Unit Transfer Prices (each, a "Recalculated Transfer Price") in accordance with Annex K within **[*]** after the end of **[*]** . Such recalculation shall be made using the Working Percentages, Target Yield and updated Net Selling Prices as determined in Annex I for such **[*]** . In the event that a particular Interim Unit Transfer Price is less than the Recalculated Transfer Price, the JV shall deliver a reconciliation statement to the applicable Member Party setting forth the difference in price multiplied by the quantity of active pharmaceutical ingredient the Member Party invoiced to the JV during such **[*]** . In the event a particular Interim Unit Transfer Price is greater than the Recalculated Transfer Price, the JV shall deliver a reconciliation statement to the applicable Member Party setting forth the difference in price multiplied by the quantity of active pharmaceutical ingredient the Member Party invoiced to the JV during such **[*]** . In each case, the relevant adjustment shall be addressed as part of the cash netting mechanism provided for in Section 4.1 of the Operating Agreement and shall be settled

on the first Cash Netting Day following such recalculation. The Interim Unit Transfer Prices shall not be changed as a result of the recalculation mentioned above.

(iv) Following **[*]** , the JV shall cause the Independent Accounting Expert to calculate (solely for planning, accounting and bookkeeping purposes of the Member Parties) the Actual Percentages for such **[*]** based on data as of **[*]** , to be completed no later than **[*]** after **[*]** . The Respective Percentages shall not be changed as a result of the recalculation mentioned above.

(d) Following the end of each Calendar Year, the JFC shall cause an independent Third Party accounting firm or consultant mutually agreed by the Member Parties (such agreed Third Party, the "Independent Accounting Expert") to calculate the Actual Percentages for such Calendar Year and recalculate the Transfer Prices (using the Product Yields determined pursuant to Section 7.1(d)(ii) and actual Net Selling Price for the Combination Product determined pursuant to Section 7.1(d)(iii)) with respect to shipments of bulk active pharmaceutical ingredient made by the Member Parties in such Calendar Year pursuant to Section 4.2(c) and their respective Supply Agreements, as follows.

(i) Within **[*]** following the end of each Calendar Year, each Member Party shall provide to the Independent Accounting Expert the data necessary in order to make the calculations required pursuant to this Section 7.1(d), which data is described in Annex N.

(ii) Within **[*]** following the end of each Calendar Year, the JFC shall (A) calculate the Product EFV Yield, Product FTC Yield, and Product TDF Yield, in each case based on Actual Yield, for the supply of Combination Product and (B) provide to the Independent Accounting Expert written confirmation of such calculations. Within **[*]** following the first full-scale commercial manufacturing run, the JFC shall determine a blended average of each of Product EFV Yield, Product FTC Yield and TDF Product Yield on a per weight and per unit basis and inform the Independent Accounting Expert thereof.

(iii) Within **[*]** following the end of each Calendar Year, the JV shall cause the Independent Accounting Expert to (A) calculate the actual Net Selling Prices of the Combination Product, Truvada and Sustiva for that Calendar Year, (B) calculate the Actual Gilead Percentage and the Actual BMS Percentage pursuant to Section 7.1(b) using the actual Net Selling Prices of the Combination Product, Truvada and Sustiva for that Calendar Year and (C) recalculate the Gilead Transfer Price and the BMS Transfer Prices for the bulk active pharmaceutical ingredient shipments during that Calendar Year pursuant to Section 7.1(a) in accordance with Annex K.

(iv) Within **[*]** following the end of each Calendar Year, on the basis of such the recalculated Transfer Prices (as notified to the JV by the Independent Accounting Expert), the JFC shall recalculate the amounts owed by the JV to the Member Parties with respect to shipments received by the JV in such Calendar Year pursuant to Section 4.2(c) and their respective Supply Agreements and provide to the Member Parties notice of the recalculated amounts (and the adjustments that will be required pursuant to this Section 7.1(d)(iv)). If the aggregate amount invoiced by a Member Party for Transfer Prices is greater

than or less than the aggregate amount owed to such Member Party by the JV for such Transfer Prices, as recalculated pursuant to this Section 7.1(d), then the relevant adjustment shall be addressed as part of the cash netting mechanism provided for in Section 4.1 of the Operating Agreement and shall be settled on the first Cash Netting Day following such recalculation.

(e) The Independent Accounting Expert shall be bound by commercially reasonable written confidentiality and non-use obligations to the Member Parties. Such Independent Accounting Expert shall, upon the written request of either Member Party (the "Initiating Member"), audit the other Member Party to confirm the accuracy of the data provided to such Independent Accounting Expert by such other Member Party. Further, upon the written request of either Member Party, the calculations of the Independent Accounting Expert shall be audited by a second Third Party mutually agreed by the Member Parties. The Independent Accounting Expert and the Third Party auditor, if any, shall notify the Member Parties of their respective determinations; provided , however , that neither the Independent Accounting Expert nor any Third Party selected to audit the Independent Accounting Expert shall share with either Member Party any information provided to such Independent Accounting Expert (and/or such Third Party) by the other Member Party. The calculations made by the Independent Accounting Expert pursuant to this Section 7.1(e) shall be binding on the Parties; provided , however , that in the event that a Third Party auditor identifies a discrepancy in the Independent Accounting Expert's calculations, the Member Parties shall cause the Independent Accounting Expert and such Third Party to confer and agree upon the final calculations and advise the Member Parties in writing of same, whereupon such final agreed calculations shall be binding on the Parties. The Initiating Member shall bear the fees and costs of the Independent Accounting Expert in connection with its confirmation of the accuracy of such data, unless the Independent Accounting Expert finds a discrepancy equal to or greater than **[*]** therein, in which case the other Member Party shall bear such fees and costs.

7.2 Royalty Payments to Third Parties . If a Third Party's Patent is or would be infringed or a Third Party's trade secrets are or would be misappropriated solely as a direct result of the incorporation of TDF, FTC or both TDF and FTC in the Combination Product, then Gilead shall be solely responsible for any Losses or royalty, license fee or other payment obligation to such Third Party (which shall not qualify as a JV Expense or Authorized Expense) in connection with such infringement or misappropriation, including, without limitation, its obligations pursuant to Section 11.4. If a Third Party's Patent is or would be infringed or a Third Party's trade secrets are or would be misappropriated solely as a direct result of the incorporation of EFV in the Combination Product, then BMS shall be solely responsible for any Losses or royalty, license fee or other payment obligation to such Third Party (which shall not qualify as a JV Expense or Authorized Expense) in connection with such infringement or misappropriation, including, without limitation, its obligations pursuant to Section 11.4. All other royalty, license fee or other payments by Gilead or BMS to Third Parties in connection with licenses under Third Party Patents or Third Party trade secrets which are reasonably necessary for the performance of the Member Parties' obligations under this Agreement shall qualify as Authorized Commercialization Expenses.

7.3 Authorized Expenses; Mode and Timing of Payment .

(a) The JV shall bear all Authorized Expenses incurred by Gilead and BMS. Each Member Party shall calculate and invoice the JV for its respective Authorized Expenses incurred in each Calendar Quarter in sufficient time to ensure that the applicable invoice is received by the JV no later than the last day of the next Calendar Quarter (the "Final Invoice Date"). The JV shall not have any obligation to make payments to Gilead or BMS on account of any such expenses incurred in a given Calendar Quarter for which an invoice is not received by the Final Invoice Date.

(b) All payments by the JV to the Member Parties pursuant to Sections 7.3(a) and 14.6(b)(ii) and other payments to be made to Member Parties under this Agreement shall be made by wire transfer or electronic funds transfer of United States Dollars in the requisite amount to such bank account as each Member Party may designate from time to time by notice to the payor.

(c) Each Member Party shall calculate and invoice the JV at the time of shipment, for the Transfer Price for each shipment of bulk active pharmaceutical ingredient pursuant to Section 4.2(c) and the applicable Supply Agreement using the applicable Interim Unit Transfer Price. The JV shall pay to a Member Party any amounts owed to such Member Party (or, in the case of BMS, to BMS Sub) pursuant to Section 7.1(a) on the applicable Cash Netting Day as provided in Section 4.1 of the Operating Agreement. In the case of any shipment of bulk active pharmaceutical ingredient pursuant to the applicable Supply Agreement during the first Calendar Quarter of a given Calendar Year prior to the JFC giving notice of the applicable Interim Unit Transfer Price, the Member Party providing such shipment shall use the Interim Unit Transfer Price for the immediately preceding Calendar Year for purposes of invoicing such shipment, provided that upon the JFC's determination of the new Interim Unit Transfer Price for the Calendar Year in which such shipment occurs pursuant to Section 7.1(d) and Annex K, the JV shall recalculate such invoices using such new Interim Transfer Price for such Calendar Year and at the time of payment shall issue to the applicable Member Party a reconciliation statement, with respect to such invoice to reconcile any differences between the original Transfer Price for such shipment and the Transfer Price for such shipment as calculated using such new Interim Unit Transfer Price.

(d) Interest shall accrue on delinquent payments from the date such payments are due at the lesser of (i) the prime rate of interest, as published in The Wall Street Journal (Eastern United States Edition), plus **[*]** basis points and (ii) the maximum rate of interest permissible under Applicable Law, taking into consideration any amounts deemed additional interest.

7.4 Taxes . The JV shall be responsible for all sales, use, excise, value added and similar taxes and charges imposed with respect to acquisition of product from a Member Party and/or payments by the JV to a Member Party pursuant to this Section 7, provided that each Member Party shall be responsible for any taxes (including any such taxes imposed by way of withholding) in the nature of income or franchise taxes or based on or measured by gross or net income imposed with respect to its income. The JV shall pay any and all withholding taxes or similar charges imposed by any governmental unit that are required to be withheld from any

amounts due to a Member Party from the JV pursuant to this Section 7 to the proper taxing authority, and proof of payment of such taxes or charges shall be secured and sent to such Member Party as evidence of such payment. All amounts paid by the JV pursuant to the immediately preceding sentence with respect to taxes for which a Member Party is responsible pursuant to the first sentence of this Section 7.4 shall be paid for the account of such Member Party and deducted from the amounts due from the JV to such Member Party pursuant to this Section 7.

SECTION 8.
FINANCIAL RECORDS

8.1 Financial Records . Gilead shall keep complete and accurate books and records on behalf of the JV pertaining to sales of the Combination Product, including, without limitation, books and records of the Net Sales of the Combination Product, in the detail required for the calculation on behalf of the JV of amounts payable by the JV under Section 7.1(a) and to identify the purchase order details for each customer to which it sells the Combination Product, or pertaining to Authorized Commercialization Expenses, Authorized Development Expenses or Authorized Other Expenses. Gilead shall retain such books and records for at least the latest of (a) three (3) years after the Calendar Quarter in which the relevant sale was made or the relevant expense was reimbursed pursuant to Section 7.3, (b) the expiration of the applicable statute of limitations for tax purposes (or any extension thereof) or (c) such longer period as may be required by Applicable Law. Gilead and BMS shall each keep all records of Authorized Commercialization Expenses, Authorized Development Expenses and Authorized Other Expenses that it incurs for at least the latest of (i) three (3) years after the Calendar Quarter in which it invoiced them to the JV, (ii) the expiration of the applicable statute of limitations for tax purposes (or any expiration thereof) or (iii) such longer period as may be required by Applicable Law. Gilead and BMS shall each keep documentation supporting **[*]** for at least (x) three (3) years after the Calendar Quarter in which such **[*]** occurred or (y) such longer period as may be required by Applicable Law.

8.2 Audit of Records . At the request of BMS or Gilead, as the case may be, the other Member Party shall permit an independent certified public accountant reasonably acceptable to the other Member Party, at reasonable times and upon reasonable notice, to examine the books and records maintained by the other Member Party (and, if applicable, the books and records maintained by Gilead on behalf of the JV) pursuant to Section 8.1 to verify any or all of the following: (a) the accuracy of the amounts invoiced by the other Member Party to the JV pursuant to Section 7.1 and (b) the Authorized Commercialization Expenses, Authorized Development Expenses and Authorized Other Expenses charged by the other Member to the JV, in each case only as to any period ending not more than three (3) years prior to the date of such request. Such Third Party accountant shall be bound by written commercially reasonable confidentiality and non-use obligations to the Member Parties. Each Member Party shall receive a copy of the Third Party accountant's report of any such audit, which shall disclose only whether such amounts as invoiced or charged are correct or incorrect, and the amounts of any underpayments or overpayments; such report shall be Confidential Information of both Member Parties. Any discrepancy shall be rectified by a reconciliation payment made by the underpaying Party or the overpaid Party, as the case may be, within thirty (30) days after receipt of notice thereof. If such audit establishes that either the non-requesting Member Party or the JV

made an error in invoicing or payment to the detriment of the requesting Member Party, in amount equal to or greater than **[*]** of the relevant amounts for the period under audit, then the out-of-pocket costs of such audit shall qualify as an Authorized Other Expense. In all other cases, the costs of such audit shall be borne solely by the requesting Member Party and shall not qualify as a JV Expense or an Authorized Expense. BMS and Gilead may each make audit requests under this Section 8.2 on its own behalf or on behalf of the JV.

8.3 Certain Reports . So that BMS may satisfy its internal reporting needs, Gilead shall provide to BMS, at the applicable times set forth in Annex M, the financial data described in that Annex.

SECTION 9.
ADVERSE EVENT AND OTHER INFORMATION EXCHANGE

9.1 Pharmacovigilance . Subject to the terms of this Agreement, BMS and Gilead (under the guidance of their respective Pharmacovigilance Departments, or equivalent thereof) shall define and finalize mutually acceptable guidelines and procedures to be followed by the Member Parties with respect to the receipt, investigation, recordation, communication, and exchange (as between the Member Parties) of adverse event reports, pregnancy reports, and any other information, concerning the safety of the Combination Product or EFV, TDF or FTC, as appropriate. Such guidelines and procedures shall be included in an agreement (hereafter referred to as the Safety Data Exchange Agreement ("SDEA")), to be entered into by the Member Parties prior to the earlier to occur of (i) the **[*]** anniversary of the Effective Date and (ii) the first dosing of the Combination Product in patients, and shall be in accordance with, and enable the Parties and their Affiliates to fulfill, local and international regulatory reporting obligations to government authorities. Furthermore, such agreed procedures shall be consistent with relevant International Council for Harmonization guidelines, except where said guidelines may conflict with existing local regulatory safety reporting requirements, in which case local reporting requirements shall prevail. Without limitation of the foregoing, the SDEA shall include provisions stating that: (i) Gilead shall be primarily responsible for complying with Applicable Laws in collecting and reporting to Regulatory Authorities any information about adverse events associated with the use of the Combination Product; (ii) Gilead shall maintain the global safety database for the Combination Product; and (iii) BMS shall have the right to review and approve PSURs prepared by Gilead, such approval not to be unreasonably withheld.

9.2 Material Communications . In addition to the notifications required by Section 3.9 and the SDEA, each Member Party shall promptly provide notice to the other Member Party of any material communications with any governmental agency concerning the safety of the Combination Product, including, without limitation, adverse drug reaction reports. Copies of all such material communications shall be attached to the applicable notice.

SECTION 10.
PRODUCT RECALL

10.1 Notification and Recall .

(a) In the event that any governmental agency or authority issues or requests a recall or market withdrawal or takes similar action in connection with the Combination Product, or in the event that either Member Party determines that a recall or market withdrawal of the Combination Product may be necessary or advisable, such Member Party shall advise the other Member Party thereof by telephone, within **[*]** . Each Member Party shall also notify the other promptly in the event of (i) the issuance of an FDA field alert or similar alert by such Member Party (in which case the Member Party issuing such field alert shall notify the other Member Party at the same time as the applicable governmental agency or authority), and (ii) any communication from any governmental agency or authority regarding a potential recall or market withdrawal of the Combination Product or any of such Member Party's respective Single Agent Product or Double Agent Product.

(b) Within **[*]** of receipt of notice given pursuant to the first sentence of Section 10.1(a), the Member Parties' shall cause their respective representatives from the business, medical, regulatory, quality assurance and legal functions (and any others deemed necessary by a Member Party) to convene an initial meeting to consider whether or not the JV should conduct a recall (except in the case of a government-mandated recall or market withdrawal), and such representatives shall thereafter make a recommendation to the Member Parties with respect to such determination, and, if there is a recommendation to recall the Combination Product, with respect to the timing of the recall; the breadth, extent and level of customer to which the recall shall reach; the strategies and notifications to be used; and other related issues. Neither Member Party shall unreasonably object to a recall requested by the other Member Party; and neither Member Party shall have any right to object to a recall requested by the other Member Party (i) for failure of the Combination Product to meet the specifications therefor, (ii) if there is a reasonable basis to conclude that material harm to patients may occur, or (iii) for the Manufacture of the Combination Product in a manner that does not comply with the Act. Notwithstanding the foregoing, if a recall or market withdrawal is mandated by a governmental agency or authority, or a recall is proposed by a Member Party, on account of such Member Party's Single Agent Product or Double Agent Product, then such Member Party may cause the JV (and, accordingly, Gilead shall take such action on behalf of the JV) to effectuate such recall on such reasonable terms as such Member Party determines, without the meeting described in the first sentence of this Section 10.1(b) and without any liability to the other Member Party or the JV (except for expenses described in Section 10.2 and indemnity amounts payable by a Party pursuant to Section 13.7).

(c) The Member Parties may, for commercial reasons or otherwise, mutually determine to withdraw the Combination Product from the market. If the reason for market withdrawal relates to efficacy or safety, such withdrawal shall be treated as one mandated by a government agency or authority and be dealt with as provided in Section 10.1(b). In all other cases, the JV shall, upon receiving FDA approval, cease selling the Combination Product; and the Member Parties shall mutually determine whether, and if so how, to recall any Combination Product already on the market.

(d) Nothing set forth in this Section 10.1 shall be construed as restricting the right of either Member Party to make a timely report of such matter to any government agency or take other action that it deems appropriate or required by Applicable Law.

10.2 Recall Expenses . The Member Parties shall bear the expenses of any recall of the Combination Product in proportion to their Respective Percentages, and their respective external, out-of-pocket costs of such recall (without any markup) shall qualify as an Authorized Other Expense; provided , however , that each Member Party shall bear the expenses of a recall incurred in a reasonable manner to the extent that such recall is (a) caused by such Member Party's breach of its obligations under this Agreement or its Supply Agreement (or, if it is the Supplier, its supply contract referred to in Section 4.2) or its gross negligence or willful misconduct, or (b) otherwise occasioned solely by such Member Party's Single Agent Product and/or Double Agent Product, as the case may be. Such expenses of recall shall include, without limitation, the expenses of notification and destruction or return of the recalled Combination Product and the refund to consumers of amounts paid for the recalled Combination Product.

SECTION 11.
INTELLECTUAL PROPERTY RIGHTS

11.1 Ownership of Intellectual Property .

(a) Gilead Intellectual Property . Except as otherwise expressly provided in Sections 6.1(a), 6.3(a), 6.4(a) and 14.6, as among the Parties, Gilead shall own all right, title, and interest in and to the Gilead Patents, the Gilead Know-How, the Gilead Inventions, and the Gilead Regulatory Documentation. Gilead shall disclose, and shall cause its Affiliates to disclose, to BMS any BMS Core Improvement promptly after it is conceived, discovered, developed, or otherwise made.

(b) BMS Intellectual Property . Except as otherwise expressly provided in Sections 6.1(b), 6.3(b), 6.4(a), 6.4(d) and 14.6, as among the Parties, BMS shall own all right, title, and interest in and to the BMS Patents, the BMS Know-How, the BMS Inventions and the BMS Regulatory Documentation. BMS shall disclose, and shall cause its Affiliates to disclose, to Gilead any Gilead Core Improvement promptly after it is conceived, discovered, developed, or otherwise made.

(c) JV Intellectual Property . Except as otherwise expressly provided in Sections 6.2, 6.4(b), 6.4(c), 6.4(d) and 14.6, as among the Parties, the JV shall own all right, title and interest in and to the Joint Patents, Joint Know-How, Joint Inventions and Combination Product Regulatory Documentation. Except as otherwise expressly permitted by this Agreement, no Party, including, without limitation, the JV, shall license, assign, sell, convey or otherwise Exploit its rights in any Joint Patents, Joint Know-How, Joint Inventions or Combination Product Regulatory Documentation for any purpose. Each Member Party shall disclose to the other Member Party promptly in writing any and all Joint Inventions that are conceived, discovered, developed or otherwise made by or on behalf of such Member Party, and each of the Member Parties hereby assigns, and agrees to cause its employees and agents to assign to the JV, without payment of additional consideration, all of such Member Party's rights, title and interest in and to such Joint Inventions.

11.2 Prosecution of Patents .

(a) Gilead Patents . Gilead shall have the sole right, at its sole cost and expense, to prepare, file, prosecute and maintain the Gilead Patents in the Territory. Gilead shall have sole discretion to determine which Gilead Patents, if any, shall be listed in the "Orange Book" with respect to the Combination Product.

(b) BMS Patents . BMS shall have the sole right, at its sole cost and expense, to prepare, file, prosecute and maintain the BMS Patents in the Territory. BMS shall have the sole discretion to determine which BMS Patents, if any, shall be listed in the "Orange Book" with respect to the Combination Product.

(c) Joint Patents .

(i) A patent application for a Joint Patent claiming any Joint Invention shall be filed only with the mutual written agreement of the Member Parties, and solely in accordance with this Section 11.2(c). In the event that either Member Party desires to have filed a patent application for a Joint Patent claiming a Joint Invention, such Member Party shall propose such filing to the other Member Party, and representatives designated by each Member Party shall discuss and consider the matter. In the event that the Member Parties fail to reach written agreement that such patent application should be filed, neither Member Party, whether on behalf of itself, the JV or any Third Party, may file or cause to be filed such patent application.

(ii) In the event that the Member Parties mutually agree in writing pursuant to Section 11.2(c)(i) that a patent application for a Joint Patent claiming a Joint Invention should be filed, Gilead shall have the sole right and obligation to prepare, file, prosecute and maintain the Joint Patents in the name of the JV in such countries as the Member Parties shall determine, and the external, out-of-pocket costs, without any markup, with respect thereto shall be treated as Authorized Other Expenses. BMS shall cooperate fully in Gilead's preparation, filing, prosecution, and maintenance of the Joint Patents (and in any other proceedings before a patent official or office with respect thereto). Such cooperation shall include, without limitation, (A) promptly executing all papers and instruments or requiring employees to execute such papers and instruments as reasonable and appropriate so as to enable Gilead to prepare, file, prosecute, and maintain the Joint Patents in any country; and (B) promptly informing Gilead of matters that may affect the preparation, filing, prosecution, or maintenance of any such Joint Patent, including, without limitation, providing a copy of any official correspondence received by BMS from a patent office in any country with respect to Joint Patents. Gilead shall keep BMS advised of the status of Joint Patent filings and upon request of BMS shall provide copies of any official correspondence or other documentation with respect to official actions and submissions relating to the prosecution or maintenance of such Joint Patents.

(iii) The Member Parties shall have the sole discretion to determine (by mutual agreement) which Joint Patents, if any, shall be listed in the "Orange Book" with respect to the Combination Product.

11.3 Enforcement of Patents .

(a) Gilead Patents . As among the Parties, Gilead shall have the sole right and option, at its sole cost and expense, to respond to any Infringement (as defined below) with respect to any Gilead Patent by appropriate steps, including, without limitation, by filing an infringement suit or taking other similar action. Gilead shall also have the sole right and option not to take action to respond to any such Infringement (and in such event no other Party shall have the right to take any action to respond to any Infringement with respect to such Gilead Patent). At Gilead's request, each of BMS and the JV shall, at such Party's own expense, provide reasonable assistance to Gilead in connection with any such action to respond to Infringement, including, without limitation, providing access to relevant documents and other evidence, making its employees available at reasonable business hours, and joining (and having the JV join) the action to the extent necessary to allow Gilead to maintain the action. For purposes of this Section 11.3, (i) "Infringement" shall mean infringement or potential infringement of one (1) or more Gilead Patents and/or one (1) or more BMS Patents, as the case may be, by the actions of a Third Party in connection with a product (an "Infringing Combination Product") containing, among its active pharmaceutical ingredients, all of TDF, FTC and EFV and (ii) "other similar action" shall include, without limitation, responses to paragraph (iv) certification under the Drug Price Competition and Patent Restoration Act (also known as the Hatch-Waxman Act) resulting from an attempt to market a Generic Version Combination Product (a "Paragraph (iv) Certification"). For the avoidance of doubt, the Parties acknowledge and agree that infringement of a Gilead Patent or a BMS Patent, as the case may be, other than by an Infringing Combination Product, is outside the scope of this Agreement and shall not create any rights or impose any obligations on the Parties hereunder, including any right or obligation to take actions to respond to such infringement.

(b) BMS Patents . As among the Parties, BMS shall have the sole right and option, at its sole cost and expense, to respond to any Infringement with respect to any BMS Patent by appropriate steps, including, without limitation, filing an infringement suit or taking other similar action. BMS shall also have the sole right and option not to take action to respond to any such Infringement (and in such event no other Party shall have the right to take any action to respond to any Infringement with respect to a BMS Patent). At the request of BMS, each of Gilead and the JV shall, at such Party's own expense, provide reasonable assistance to BMS or the EFV Licensor as applicable, in connection with any such action to respond to Infringement including, without limitation, providing access to relevant documents and other evidence, making its employees available at reasonable business hours, and joining (and having the JV join) the action to the extent necessary to allow BMS or the EFV Licensor to maintain the action.

(c) Joint Patents . If either Member Party determines that any Joint Patent is being infringed by a Third Party's activities, it shall notify the other Member Party in writing and provide it with any evidence of such infringement that is reasonably available. Gilead, on behalf of, and in the name of, the JV, shall have the first right and option to respond to any infringement with respect to any Joint Patent by appropriate steps, including without limitation, filing an infringement suit or taking other similar action, and shall notify BMS of, and consult with BMS from time to time regarding, any such suit or other action. If Gilead elects at its sole discretion not to take action to respond to any such infringement, then BMS, on behalf of, and in the name of, the JV, shall have the right and option to respond to such infringement by

appropriate steps, including without limitation, filing an infringement suit or taking other similar action, and shall notify Gilead of, and consult with Gilead from time to time regarding, any such suit or other action. Without limiting the foregoing, in the event that Gilead (for itself or on behalf of the JV) receives a Paragraph (iv) Certification with respect to the Combination Product, Gilead shall notify BMS within **[*]** after its receipt of such Paragraph (iv) Certification whether or not Gilead has made the election described in the preceding sentence and, if Gilead elects not to take action to respond to any such infringement, or fails to notify BMS within such **[*]** period, then BMS shall have the rights described in the immediately preceding sentence. The Member Party not taking action to respond to the infringement shall provide reasonable assistance to the Member Party taking such action, including without limitation providing access to relevant documents and other evidence, making its employees available at reasonable business hours, and joining the action to the extent necessary to allow the Member Party taking such action to maintain the action. Any amounts recovered by a Member Party pursuant to this Section 11.3(c), whether by settlement or judgment, shall be deemed to be recovered on behalf of (and shall be paid over to) the JV; and the reasonable out-of-pocket costs, including reasonable attorneys' fees, without any markup, incurred by the Member Parties in making such recovery shall be treated as Authorized Other Expenses.

(d) Paragraph (iv) Certifications . Each Member Party shall notify the other Member Party in writing within **[*]** of receiving any Paragraph (iv) Certification with respect to the Combination Product, (in the case of BMS) Sustiva, or (in the case of Gilead) Viread, Emtriva or Truvada, as applicable.

11.4 Infringement of Third Party Rights . If a Third Party initiates a Proceeding against the JV or a Member Party alleging that the conduct of the Project Activities infringes or will infringe such Third Party's Patent or misappropriates or will misappropriate such Third Party's trade secrets, (a) if such Proceeding arises as a direct result of TDF, FTC or both TDF and FTC being incorporated in the Combination Product, in each case without reference to EFV, then Gilead shall defend and hold the JV and BMS harmless from and against such Proceeding and any Losses resulting from such Proceeding, and shall have the sole right and obligation to defend such Proceeding or to settle it (*e.g.* , by obtaining a license from such Third Party) at Gilead's sole cost (which shall not be deemed a JV Expense or Authorized Expense), and BMS shall reasonably cooperate at Gilead's request and expense in such defense and/or settlement; (b) if such claim arises as a direct result of EFV being incorporated in the Combination Product, in each case without reference to TDF or FTC, then BMS shall defend and hold the JV and Gilead harmless from and against such Proceeding and any Losses resulting from such Proceeding, and shall have the sole right and obligation to defend such Proceeding or to settle it (*e.g* ., by obtaining a license from such Third Party) at BMS' sole cost (which shall not be deemed a JV Expense or Authorized Expense), and Gilead shall reasonably cooperate at BMS' request and expense in such defense and/or settlement; and (c) in the event that neither clause (a) nor (b) applies, then the JEC shall determine whether to defend against such claim or to obtain a license from such Third Party, and if so, on what terms and conditions (which out-of-pocket costs, without any markup, shall be deemed Authorized Other Expenses), and which Member Party shall take such actions on behalf of the JV. The procedures set forth in Section 13.8 shall apply to indemnification of Member Parties under this Section 11.4.

11.5 Trademarks .

(a) Gilead Licensed Trademarks . Gilead shall have the sole right, at its sole cost and expense, to search, clear, file, register, prosecute, maintain and enforce the Gilead Licensed Trademarks in the Territory. Gilead shall have the sole right and option, at its sole cost and expense, to respond to any infringement with respect to any Gilead Licensed Trademark by appropriate steps, including, without limitation, by filing an infringement suit or taking other similar action. Gilead shall also have the sole right and option not to prosecute, maintain or enforce Gilead Licensed Trademarks or take action to respond to any such infringement.

(b) BMS Licensed Trademarks . BMS shall have the sole right, at its sole cost and expense, to search, clear, file, register, prosecute, maintain and enforce the BMS Licensed Trademarks in the Territory. BMS shall have the sole right and option, at its sole cost and expense, to respond to any infringement with respect to any BMS Licensed Trademark by appropriate steps, including, without limitation, by filing an infringement suit or taking other similar action. BMS shall also have the sole right and option not to prosecute, maintain or enforce BMS Licensed Trademarks or take action to respond to any such infringement.

(c) Combination Product Trademarks . Except as otherwise expressly provided in Section 6.7, the Parties agree that, as among themselves, the JV shall own all right, title and interest in and to the Combination Product Trademarks. Gilead shall be solely responsible for searching, clearing, filing, registering, prosecuting and maintaining the Combination Product Trademarks in the Territory in the name of the JV, the external out-of-pocket costs (without any markup) of which shall be treated as Authorized Other Expenses. If either Member Party has a reasonable basis to believe that a Third Party is or may be engaging in commercially significant infringement of any Combination Product Trademark, such Member Party shall notify the other Member Party in writing and provide it with any evidence of such infringement that is reasonably available. Gilead shall have the first right and option to respond to any infringement or potential infringement with respect to any Combination Product Trademark by appropriate steps, including, without limitation, filing an infringement suit or taking other similar action, and shall notify BMS of, and consult with BMS from time to time regarding, any such suit or other action. If Gilead elects at its sole discretion not to take action to respond to any such infringement or potential infringement within thirty (30) days of Gilead's becoming aware of such infringement or potential infringement, then BMS shall have the right and option to respond to such infringement or potential infringement by appropriate steps, including, without limitation, filing an infringement suit or taking other similar action, and shall notify Gilead of, and consult with Gilead from time to time regarding, any such suit or other action. The Member Party not taking action to respond to the infringement or potential infringement shall provide reasonable assistance to the Member Party taking such action, including, without limitation, providing access to relevant documents and other evidence, making its employees available at reasonable business hours, and joining the action to the extent necessary to allow the Member Party taking such action to maintain the action. Any amounts recovered by a Member Party pursuant to this Section 11.5(c), whether by settlement or judgment, shall be deemed to be recovered on behalf of (and shall be paid over to) the JV; and the reasonable out-of-pocket costs, including reasonable attorneys' fees, without any markup,

incurred by the Member Parties in making such recovery shall be treated as Authorized Other Expenses.

SECTION 12.
CONFIDENTIALITY

12.1 Treatment of Confidential Information . Except as provided in this Section 12, during the term of this Agreement and for five (5) years after this Agreement's expiration or termination, each Party (the "Receiving Party") (a) shall hold in strict confidence and shall not publish or otherwise disclose, directly or indirectly, to any Third Party any Confidential Information of another Party or its Affiliates (collectively, the "Disclosing Party"), (b) except as permitted pursuant to Section 12.7, shall not directly or indirectly use Confidential Information of a Disclosing Party for any purpose other than performance of its obligations or exercise of its rights under this Agreement, or as otherwise permitted under this Agreement, the Operating Agreement or any Ancillary Agreement, and (c) shall use the same level of effort to maintain the confidentiality of Confidential Information of a Disclosing Party as it uses for its own confidential or proprietary information, but in any event at least commercially reasonable efforts.

12.2 Permitted Disclosure . Each Party may disclose Confidential Information of a Disclosing Party to the extent that such disclosure is:

(a) Made only as required to specific persons or entities under applicable laws, rules, regulations or orders of a court of competent jurisdiction or other supra-national, federal, national, regional, state, provincial or local governmental or regulatory body of competent jurisdiction; provided , however , that the Receiving Party shall first have given notice to the Disclosing Party and given the Disclosing Party a reasonable opportunity to seek any available limitations on, exemptions from or protections available under such disclosure requirement and reasonably cooperate in any such efforts by the Disclosing Party; and provided further that if an exemption from such disclosure requirement is not obtained, the Confidential Information disclosed in response to such requirement shall be limited to that information which is legally required to be disclosed;

(b) Otherwise required by law, in the opinion of legal counsel to the Receiving Party as expressed in an opinion letter in form and substance reasonably satisfactory to the Disclosing Party, which shall be provided to the Disclosing Party at least two (2) Business Days prior to the Receiving Party's disclosure of the Confidential Information pursuant to this Section 12.2(b);

(c) Made as required by the applicable laws and regulations (including, without limitation, Regulation FD) relating to securities or rules of the National Association of Securities Dealers, the New York Stock Exchange, or any other applicable association governing the stock exchange on which a Member Party's stock is listed, including without limitation filing of reports on Forms 10-K, 10-Q and 8-K with the U.S. Securities and Exchange Commission, in which case (i) the procedures set forth in Section 12.2(d) shall apply if Section 12.2(d) is also applicable to such filing and (ii) the procedures set forth in the proviso to Section 12.5(b) shall apply;

(d) Made in the form of a filing of a copy of this Agreement by Gilead or BMS (as the case may be) with the U.S. Securities and Exchange Commission to comply with Applicable Law, provided that such Member Party (i) requests confidential treatment of at least the commercial terms and material terms hereof to the extent such confidential treatment is reasonably available to such Member Party, and (ii) solicits the other Member Party's comments on such request for confidential treatment, in which case the filing Member Party shall use commercially reasonable efforts to take into account the other Member Party's reasonable comments on such request;

(e) Subject to Section 3.4, made by the Receiving Party to the Regulatory Authorities as required in connection with any filing, application or request for any regulatory approvals or otherwise to comply with the requirements of Applicable Law; provided , however , that reasonable measures shall be taken to assure confidential treatment of such information;

(f) Made by the Receiving Party as necessary to file or prosecute patent applications, prosecute or defend litigation or otherwise establish rights or enforce obligations under this Agreement;

(g) Made by the Receiving Party to its employees, Affiliates, independent contractors, legal counsel, consultants, auditors and advisors who are bound by confidentiality and non-use obligations no less protective than those in this Section 12 and who reasonably require such Confidential Information for the performance of such Member Party's obligations or enforcement of such Member Party's rights under this Agreement (including, without limitation, the matters described in Sections 12.2(a) through (j)); provided , however , that the Receiving Party shall remain responsible for any failure by any such Person to treat such Confidential Information as required by this Section 12;

(h) Made by the Receiving Party to its licensors of its respective Technology pursuant to contractual obligations to such licensors existing as of the Effective Date and under obligations of confidentiality and non-use no less protective than those in this Section 12; provided , however , that the Receiving Party shall remain responsible for any failure by any such Person to treat such Confidential Information as required by this Section 12;

(i) Made by the Receiving Party as necessary for the filing of its tax returns or pursuant to any audit thereof; or

(j) As otherwise permitted pursuant to Section 12.5 and Section 12.7.

12.3 Confidential Information .

(a) Defined . "Confidential Information" of a Party shall mean the terms of this Agreement and all Information and Inventions provided by or on behalf of such Party to another Party (or, in the case of Section 5.3, to the Pricing Committee) either in connection with the discussions and negotiations pertaining to this Agreement (including under the Mutual Confidential Disclosure Agreement entered into by and between Bristol-Myers Squibb Company and Gilead Sciences, Inc. as of December 12, 2003) or in the course of performing this Agreement or the MTTA, including, without limitation: the material terms of

this Agreement; data; knowledge; practices; processes; ideas; research plans; engineering designs and drawings; research data; manufacturing processes and techniques; scientific, manufacturing, marketing and business plans; and financial and personnel matters relating to the Disclosing Party or to its present or future products, sales, suppliers, customers, employees, investors or business. For the avoidance of doubt, Confidential Information shall include any and all information provided by one Party to another Party relating to the Combination Product or the first-mentioned Party's Single Agent Product(s) or Double Agent Product, as applicable; provided , however , that information provided by one Party to another Party relating to Improvements to the Core Technology of such other Party shall be deemed Confidential Information of such other Party.

(b) Exclusions . Notwithstanding the foregoing, Information and Inventions of a Disclosing Party shall not be deemed Confidential Information with respect to a Receiving Party for purposes of this Agreement if it:

(i) was already known to the Receiving Party or its Affiliates, other than under an obligation of confidentiality or non-use, at the time of disclosure to such Receiving Party;

(ii) was generally available or known, or was otherwise part of the public domain, at the time of its disclosure to such Receiving Party;

(iii) became generally available or known, or otherwise became part of the public domain, after its disclosure to such Receiving Party through no fault of the Receiving Party or its Affiliates;

(iv) was disclosed to such Receiving Party or its Affiliates, other than under an obligation of confidentiality or non-use, by a Third Party who had no obligation to the Disclosing Party not to disclose such Information and Inventions to others; or

(v) was independently discovered or developed by such Receiving Party or its Affiliates, as evidenced by their written records, without the use of Confidential Information belonging to the Disclosing Party.

Specific aspects or details of Confidential Information shall not be deemed to be within the public domain or in the possession of a Party merely because the Confidential Information is embraced by more general information in the public domain or in the possession of such Party. Further, any combination of Confidential Information shall not be considered in the public domain or in the possession of a Party merely because individual elements of such Confidential Information are in the public domain or in the possession of such Party unless the combination and its principles are in the public domain or in the possession of such Party.

12.4 Use of Name . Subject to Sections 5.8, 6.7 and 12.5, no Member Party shall mention or otherwise use the name, insignia, symbol, trademark, trade name or logotype of another Party (or any abbreviation or adaptation thereof) in any publication, press release, promotional material or other form of publicity without the prior written approval of such other Member Party in each instance. For purposes of this Section 12.4, Approved Marketing Materials shall be deemed to have been approved by all of the Member Parties. The restrictions

imposed by this Section shall not prohibit any Member Party from making any disclosure identifying another Party that is required by Applicable Law.

12.5 Publicity; Terms of Agreement .

(a) The Parties shall make a joint public announcement of the execution and delivery of this Agreement substantially in the form of the joint press release attached as Annex L hereto upon or after execution of this Agreement.

(b) After public disclosure of the joint press release pursuant to Section 12.5(a), if either Member Party desires to make a public announcement (such as a press release) concerning the material terms of this Agreement, such Member Party shall give reasonable prior advance notice of the proposed text of such announcement to the other Member Party for its prior review and approval (except as otherwise provided in this Section 12.5(b)), such approval not to be unreasonably withheld. A Member Party commenting on such a proposed announcement shall provide its comments, if any, as soon as reasonably practicable but in any event within three (3) Business Days after receiving the proposed announcement for review. Either Member Party shall have the right to make a press release announcing the receipt of Approvals, subject only to the review procedure set forth in the preceding sentence. Neither Member Party shall be required to seek the permission of the other Member Party to repeat any information as to the terms of this Agreement that have already been publicly disclosed by such Member Party in accordance with Section 12.2 or this Section 12.5. In the event of a legally required press release or other public announcement or disclosure, the Member Party in question shall provide the other Member Party with a copy of the proposed text with as much notice as practicable (which shall be no less than three (3) Business Days prior to the proposed disclosure), the other Member Party shall respond with its comments as promptly as practicable (but no less than one (1) Business Day prior to the proposed disclosure), and the Member Party in question shall take into due consideration any and all reasonable comments that such other Member Party may provide in a timely manner; provided , however , that if a Member Party determines that it must make a legally required disclosure under Regulation FD, then it shall have the right to make such disclosure at such time as is necessary to comply with Regulation FD and shall provide the other Member Party with as much notice and opportunity for review and comment as is practicable in the circumstances.

12.6 Notification . The Receiving Party shall notify the Disclosing Party immediately, and cooperate with the Disclosing Party as the Disclosing Party may reasonably request, upon the Receiving Party's discovery of any loss or compromise of the Disclosing Party's Confidential Information.

12.7 Permitted Uses . Notwithstanding any provision of this Agreement to the contrary, regardless of which Member Party is the Disclosing Party, to the extent that any Confidential Information relates specifically to the Combination Product, including any such Confidential Information consisting of Combination Product Regulatory Documentation, each Member Party shall have the right to use such Confidential Information in connection with any Exploitation of the Combination Product to the extent permitted by the terms and conditions of this Agreement, including, without limitation (a) any use in accordance with the license grants made by the JV to the Member Parties in Section 6.2, or with the Rights of Reference granted by

the JV to the Member Parties in Sections 6.4(b), 6.4(c) and 6.4(d), as the case may be, or (b) in connection with the preparation and/or submission to Regulatory Authorities as required in connection with any filing or application, or request for regulatory approval for the Combination Product anywhere in the world.

12.8 Remedies . Each Party agrees that the unauthorized use or disclosure of any material Confidential Information by the Receiving Party in violation of this Agreement may cause severe and irreparable damage to the Disclosing Party, for which money damages represent an insufficient remedy. In the event of any violation of this Section 12, notwithstanding anything in this Agreement to the contrary, the Disclosing Party shall be authorized and entitled to seek from any court of competent jurisdiction injunctive relief, whether preliminary or permanent, with respect to such violation as well as any other relief permitted by Applicable Law, and may obtain that relief without making a showing of insufficiency of money damages or irreparable harm. The Receiving Party agrees to waive any requirement that the Disclosing Party post bond as a condition for obtaining any such relief.

SECTION 13.
WARRANTIES; INDEMNITIES

13.1 Representations, Warranties and Covenants . Each Member Party hereby represents, warrants and covenants to the other Member Party as of the Effective Date as follows:

(a) Such Member Party as applicable (i) has the power and authority and the legal right to enter into this Agreement, the Operating Agreement and any Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder, and (ii) has taken all necessary action on its part required to authorize the execution and delivery of this Agreement, the Operating Agreement and any Ancillary Agreements to which it is a party. Each of this Agreement and the Operating Agreement has been (and in the case of any Ancillary Agreements to which such Member Party is a party, when executed and delivered, will have been) duly executed and delivered on behalf of such Member Party and constitutes (and in the case of any Ancillary Agreements to which such Member Party is a party, when duly executed and delivered, shall constitute) a legal, valid and binding obligation of such Member Party and is (and in the case of any Ancillary Agreements to which such Member Party is a party, when duly executed and delivered, shall be) enforceable against it in accordance with its terms subject to the effects of bankruptcy, insolvency or other laws of general application affecting the enforcement of creditor rights and judicial principles affecting the availability of specific performance and general principles of equity, whether enforceability is considered a proceeding at law or equity.

(b) Such Member Party is not aware of any pending or threatened litigation (and has not received any communication) that alleges that such Member Party's activities related to this Agreement have violated, or that by conducting the activities as contemplated in this Agreement such Party would violate, any of the intellectual property rights of any other Person (after giving effect to the license grants in this Agreement). On the Effective Date, such Member Party has delivered to the other Member Party a list setting forth, to the extent of such Member Party's knowledge any and all (i) products liability litigation, (ii) intellectual property litigation that is reasonably likely to have a material adverse effect on such

Member Party's Single Agent Product(s) or Double Agent Product or the Combination Product, as applicable, or the rights or licenses granted by such Member Party to the other Member Party or the JV hereunder with respect to any such product, and (iii) litigation or investigation(s) initiated by, and warning letters received from, Regulatory Authorities, including Form 483 letters, in each case with respect to Manufacturing; and in each case ((i), (ii) and (iii)): (A) which relates to such Member Party's Single Agent Product(s) or Double Agent Product, and (B) which litigation or investigation is currently pending or was pending, or which warning letter was received, at any time on or after **[*]** .

(c) All necessary consents, approvals and authorizations of all regulatory and governmental authorities and other Persons required to be obtained by such Member Party in connection with the execution and delivery of this Agreement and the performance of its obligations under this Agreement have been obtained.

(d) With respect to such Member Party as applicable, the execution and delivery of this Agreement, the Operating Agreement and any Ancillary Agreements to which it is a party and the performance of such Member Party's obligations hereunder and thereunder (i) do not conflict with or violate in any material way any requirement of Applicable Law, (ii) do not conflict with or violate any provision of the articles of incorporation, bylaws, limited partnership agreement or any similar instrument of such Member Party, as applicable and (ii) do not conflict with, violate, or breach or constitute a default or require any consent under, any contractual obligation or court or administrative order by which such Member Party is bound.

13.2 Additional Representations, Warranties and Covenants of BMS . BMS represents, warrants and covenants to Gilead that:

(a) Each of BMS Parent and BMS Sub (i) is a corporation or limited liability company, as the case may be, duly organized and in good standing under the laws of the State of Delaware, and (ii) has full power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as it is contemplated to be conducted by this Agreement.

(b) Neither BMS nor any of its Affiliates has been debarred or is subject to debarment and neither BMS nor any of its Affiliates shall use in any capacity, in connection with the services to be performed under this Agreement, any Person who has been debarred pursuant to Section 306 of the Act, or who is the subject of a conviction described in such section. BMS agrees to inform Gilead in writing immediately if it or any Person who is performing services under this Agreement is debarred or is the subject of a conviction described in Section 306, or if any action, suit, claim, investigation or legal or administrative proceeding is pending or, to the knowledge of BMS, is threatened, relating to the debarment or conviction of BMS or any Person performing services under this Agreement.

(c) BMS has the right to grant the license under the BMS Patents that is set forth in Section 6.1(b), and has not, prior to the Effective Date, made a grant to any Third Party of any right or license in respect of the BMS Patents that would conflict with any grant of rights or licenses to Gilead or the JV hereunder. The BMS Patents are not subject to any

encumbrance or lien by any Third Party (except for any such encumbrances or liens as would not, in the aggregate, have a material adverse effect on the license rights granted to the JV and Gilead under this Agreement). Prior to the Effective Date, BMS has delivered to Gilead a copy (with financial terms redacted) of any license or similar grant of rights between BMS, on the one hand, and a Third Party, on the other hand, (i) pursuant to which BMS obtained from such Third Party a license or other rights with respect to any of the BMS Patents, or (ii) pursuant to which BMS grants to any such Third Party a license or other rights with respect to any of the BMS Patents for Exploitation in the Territory. BMS covenants and agrees that, except for agreements referred to in the preceding sentence (including extensions, amendments and renewals thereof), it shall not, from and after the Effective Date and throughout the term of this Agreement, grant to any Third Party any right or license in respect of the BMS Patents that would conflict with any grant to Gilead or the JV hereunder.

(d) There are no judgments or settlements against or amounts with respect thereto owed by BMS relating to the BMS Patents. To the knowledge of BMS, it has not received written notice of any Proceeding in which it is alleged that (i) the BMS Patents are invalid or unenforceable or (ii) the Exploitation of EFV, whether alone or in combination with either or both of TDF and FTC, infringes any Third Party Patent.

(e) To the knowledge of BMS, the information contained in BMS' Single Agent Product label and in the NDA for BMS' Single Agent Product represents, in all material respects, a complete and accurate reflection of the safety and efficacy profile of BMS' Single Agent Product as of the Effective Date. BMS shall use commercially reasonable efforts to maintain its Single Agent Product label and the BMS Regulatory Documentation through updates as needed to ensure that such information continues to represent a complete and accurate reflection in all material respects of the safety and efficacy profile of its Single Agent Product. It is understood and agreed that BMS makes the representation and covenant to Gilead set forth in this Section 13.2(e) solely for purposes of the Member Parties' collaboration pursuant to this Agreement, and for no other purpose.

(f) Quantities of EFV provided by BMS pursuant to Section 4.1 will (i) be Manufactured using reasonable care; (ii) conform to the applicable EFV Bulk Specifications (as defined in the BMS Supply Agreement) and with the applicable certificate of analysis at the time of delivery; (iii) be conveyed by BMS with good title and free from any lawful security interest, lien or encumbrance; and BMS (or any Affiliates or Third Party suppliers as applicable) will have obtained all approvals required by all applicable Regulatory Authorities to Manufacture EFV for use in Sustiva.

13.3 Additional Representations, Warranties and Covenants of Gilead . Gilead represents, warrants and covenants to BMS that:

(a) Each of Gilead Parent and Gilead Sub is a corporation or limited liability company, as the case may be, duly organized, validly existing and in good standing under the laws of the State of Delaware, and has full power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as is contemplated to be conducted by this Agreement.

(b) Neither Gilead nor any of its Affiliates has been debarred or is subject to debarment and neither Gilead nor any of its Affiliates shall use in any capacity, in connection with the services to be performed under this Agreement, any Person who has been debarred pursuant to Section 306 of the Act, or who is the subject of a conviction described in such section. Gilead agrees to inform BMS in writing immediately if it or any Person who is performing services under this Agreement is debarred or is the subject of a conviction described in Section 306, or if any action, suit, claim, investigation or legal or administrative proceeding is pending or, to the knowledge of Gilead, is threatened, relating to the debarment or conviction of Gilead or any Person performing services under this Agreement.

(c) Gilead has the right to grant the license under the Gilead Patents that is set forth in Section 6.1(a), and has not, prior to the Effective Date, made a grant to any Third Party of any right or license in respect of the Gilead Patents that would conflict with any grant of rights or licenses to BMS or the JV hereunder. The Gilead Patents are not subject to any encumbrance or lien by any Third Party (except for any such encumbrances or liens as would not, in the aggregate, have a material adverse effect on the license rights granted to the JV and BMS under this Agreement). Prior to the Effective Date, Gilead has delivered to BMS a copy (with financial terms redacted) of any license or similar grant of rights between Gilead, on the one hand, and a Third Party, on the other hand, (i) pursuant to which Gilead obtained from such Third Party a license or other rights with respect to any of the Gilead Patents, or (ii) pursuant to which Gilead grants to any such Third Party a license or other rights with respect to any of the Gilead Patents for Exploitation in the Territory. Gilead covenants and agrees that, except for agreements referred to in the preceding sentence (including extensions, amendments and renewals thereof), it shall not, from and after the Effective Date and throughout the term of this Agreement, grant to any Third Party any right or license in respect of the Gilead Patents that would conflict with any grant to Gilead or the JV hereunder.

(d) There are no judgments or settlements against or amounts with respect thereto owed by Gilead relating to the Gilead Patents. To the knowledge of Gilead, it has not received written notice of any Proceeding in which it is alleged that (i) the Gilead Patents are invalid or unenforceable or (ii) the Exploitation of either TDF or FTC, whether alone or together and whether or not in combination with EFV, infringes any Third Party Patent.

(e) To the knowledge of Gilead, the information contained in the labels of Gilead's Single Agent Products and Double Agent Product and in the NDAs for Gilead's Single Agent Products and Double Agent Product represents, in all material respects, a complete and accurate reflection of the safety and efficacy profile of Gilead's Single Agent Products and Double Agent Product as of the Effective Date. Gilead shall use commercially reasonable efforts to maintain its Single and Double Agent Product labels and the Gilead Regulatory Documentation through updates as needed to ensure that such information continues to represent a complete and accurate reflection in all material respects of the safety and efficacy profile of its Single and Double Agent Products. It is understood and agreed that Gilead makes the representation and covenant to BMS set forth in this Section 13.3(e) solely for purposes of the Member Parties' collaboration pursuant to this Agreement, and for no other purpose.

(f) Quantities of FTC and TDF provided by Gilead pursuant to Section 4.1 will (i) be Manufactured using reasonable care; (ii) conform to the applicable

Product Specifications (as defined in the Gilead Supply Agreement) and with the applicable certificate of analysis at the time of delivery; (iii) be conveyed by Gilead with good title and free from any lawful security interest, lien or encumbrance; and Gilead (or any Affiliates or Third Party suppliers as applicable) will have obtained all approvals required by all applicable Regulatory Authorities to Manufacture FTC and TDF for use in Viread, Emtriva and Truvada as applicable.

13.4 Disclaimer . EXCEPT AS SET FORTH IN SECTIONS 13.1, 13.2 AND 13.3, EACH PARTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE SINGLE AGENT PRODUCTS, THE DOUBLE AGENT PRODUCT, THE COMBINATION PRODUCT OR ANY ACTIVE PHARMACEUTICAL INGREDIENTS FOR THE COMBINATION PRODUCT SUPPLIED UNDER THIS AGREEMENT, OR ANY TECHNOLOGY LICENSED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. FOR THE AVOIDANCE OF DOUBT, NOTHING CONTAINED IN THIS SECTION 13.4 SHALL OPERATE TO LIMIT OR INVALIDATE ANY WARRANTY CONTAINED IN ANY ANCILLARY AGREEMENT.

13.5 Indemnification by the JV . The JV shall indemnify each of the Member Parties and their Affiliates and their respective officers, directors and employees from and against (a) (i) all Proceedings in which such Member Party (or its Affiliate) is involved or threatened to be involved and which arises out of the Exploitation of the Combination Product or either Member Party's (or its Affiliate's) performance of its obligations under and in compliance with this Agreement, the Operating Agreement, the SDEA or the MTTA and (ii) all Losses incurred by the indemnitee resulting from such Proceedings, and (b) without limitation of the foregoing clause (a), (i) all Proceedings in which such Member Party (or its Affiliate) is involved or threatened to be involved and which arises out of (A) the content of any Approved Marketing Materials, to the extent that such Approved Marketing Materials are used by both Member Parties, (B) the performance of such Member Party's duties under Section 3.3 (with respect to formulation and Manufacturing process development related activities), 5.2, 5.3, 5.4, 7.1 or 8.1 of this Agreement, (C) the performance by the Tax Matters Member of its duties under the Operating Agreement, or (D) the JV's use of the Combination Product Trademarks, the Gilead Licensed Trademarks, and/or the BMS Licensed Trademarks, and (ii) all Losses incurred by the indemnitee resulting from such Proceedings, except in each case ((a) and (b)) to the extent that such Proceedings arise out of or such Losses were caused by the indemnitee Member Party's (or its Affiliate's or subcontractor's) gross negligence, willful misconduct, failure to comply with or perform one or more of its covenants in this Agreement, the Operating Agreement, the SDEA or the MTTA, or breach or inaccuracy of one or more of its representations and warranties in this Agreement, the Operating Agreement or (if applicable) the SDEA, and except in each case ((a) and (b)) to the extent that the other Member Party has an obligation of indemnity for such Losses and Proceedings pursuant to Section 13.6, 13.7 or Section 11.4, as the case may be. The indemnification provided in this Section 13.5 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any applicable, statutes, agreement, vote of the JEC or otherwise. Except as otherwise expressly provided in this Agreement, including without

limitation this Section 13.5 or Section 13.6 or 13.7, all Losses incurred by the JV shall be borne by the Member Parties in accordance with the terms of the Operating Agreement.

13.6 Indemnification by the Member Parties in General . Each Member Party (the "Indemnifying Member Party") shall indemnify the JV and the other Member Party and its Affiliates and their respective officers, directors and employees from and against (a) all Proceedings in which the JV or such other Member Party (or its Affiliate) is involved or threatened to be involved and which arises out of (i) the Indemnifying Member Party's (or its Affiliate's or subcontractor's) gross negligence, willful misconduct, failure to comply with or perform one or more of its covenants in this Agreement, the Operating Agreement, the SDEA or the MTTA, or breach or inaccuracy of one or more of its representations and warranties in this Agreement, the Operating Agreement or (if applicable) the SDEA, or (ii) the content of any Approved Marketing Materials used by the Indemnifying Member Party in accordance with Section 5.7, following its receipt of notification from the other Member Party in accordance with Section 5.7 that the other Member Party has elected not to use such Approved Marketing Materials in the Promotion of the Combination Product in the Territory (and provided that the other Member Party does not use such Approved Marketing Materials in the Promotion of the Combination Product in the Territory), and (b) all Losses incurred by the indemnitee resulting from such Proceedings, except to the extent that such Proceedings arise out of or such Losses were caused by the other Member Party's (or its Affiliate's or subcontractor's) gross negligence, willful misconduct, failure to comply with or perform one or more of its covenants in this Agreement, the Operating Agreement, the SDEA or the MTTA, or breach or inaccuracy of one or more of its representations and warranties in this Agreement, the Operating Agreement or (if applicable) the SDEA, and except to the extent a Member Party or the JV has an obligation of indemnity for Losses and Proceedings pursuant to Section 13.7 or Section 11.4 or Section 13.5, as the case may be. The indemnification provided in this Section 13.6 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any applicable statutes, agreement, vote of the JEC or otherwise.

13.7 Indemnification for Certain Product Liability Related Matters .

(a) Gilead shall indemnify the JV and each BMS Indemnified Party from and against (i) all Proceedings in which the JV or such BMS Indemnified Party is involved or threatened to be involved and which arise from personal injury or death caused by the Combination Product due to design defects, manufacturing defects or the inherent characteristics thereof, where the **[*]** that such defect(s) or characteristics are the direct result of the incorporation in the Combination Product of TDF, FTC or both TDF and FTC, in each case without reference to the incorporation in the Combination Product of EFV (other than any Selected Product Liability Claims), irrespective of whether such defect(s) or characteristics (or any associated defects or characteristics of TDF and/or FTC) are **[*]** , and (ii) all Losses incurred by the JV or such BMS Indemnified Party, as the case may be, resulting from such Proceedings, except to the extent that such Proceedings arise out of or such Losses were caused by BMS' (or its Affiliate's or subcontractor's) gross negligence, willful misconduct, failure to comply with or perform one or more of its covenants in this Agreement, the Operating Agreement, the SDEA or the MTTA, or breach or inaccuracy of one or more of its representations and warranties in this Agreement, the Operating Agreement or (if applicable) the SDEA.

(b) BMS shall indemnify the JV and each Gilead Indemnified Party from and against (i) all Proceedings in which the JV or such Gilead Indemnified Party is involved or threatened to be involved and which arise from personal injury or death caused by the Combination Product due to design defects, manufacturing defects or the inherent characteristics thereof, where the **[*]** that such defect(s) or characteristics are the direct result of the incorporation in the Combination Product of EFV, in each case without reference to the incorporation in the Combination Product of either or both of TDF and FTC (other than any Selected Product Liability Claims), irrespective of whether such defect(s) or characteristics (or any associated defects or characteristics of EFV) are **[*]** , and (ii) all Losses incurred by the JV or such Gilead Indemnified Party, as the case may be, resulting from such Proceedings, except to the extent that such Proceedings arise out of or such Losses were caused by Gilead's (or its Affiliate's or subcontractor's) gross negligence, willful misconduct, failure to comply with or perform one or more of its covenants in this Agreement, the Operating Agreement, the SDEA or the MTTA, or breach or inaccuracy of one or more of its representations and warranties in this Agreement, the Operating Agreement or (if applicable) the SDEA.

(c) The JV shall indemnify each of the Gilead Indemnified Parties and BMS Indemnified Parties from and against (i) all Proceedings in which any such Gilead Indemnified Party or BMS Indemnified Party, as the case may be, is involved or threatened to be involved and which arise from personal injury or death caused by the Combination Product due to design defects, manufacturing defects or the inherent characteristics thereof, (A) where the **[*]** that such defect(s) or characteristics are the direct result of both (1) EFV and (2) either or both of TDF and/or FTC being incorporated into the Combination Product, (B) where it ultimately cannot be or is not determined whether such defect(s) or characteristics are the direct result of EFV, on the one hand, and either or both of TDF and FTC, on the other hand, being incorporated into the Combination Product, or (C) where such defect(s) or characteristics are the direct result of an aspect of the Combination Product other than any of its active ingredients (each such claim ((A), (B) or (C)) a "Selected Product Liability Claim"); and (ii) all Losses incurred by the Gilead Indemnified Party or BMS Indemnified Party, as the case may be, resulting from such Proceedings; in each case except to the extent that such Proceedings arise out of or such Losses were caused by a Member Party's (or its Affiliate's or subcontractor's) gross negligence, willful misconduct, failure to comply with or perform one or more of its covenants in this Agreement, the Operating Agreement, the SDEA or the MTTA, or breach or inaccuracy of one or more of its representations and warranties in this Agreement, the Operating Agreement or (if applicable) the SDEA, and except to the extent a Member Party has an obligation of indemnity for such Losses and Proceedings pursuant to Section 11.4.

(d) For purposes of Sections 13.7(b) and 13.7(c) only, **[*]** shall be deemed to be an Affiliate of Gilead; provided, however, that BMS shall have no greater scope of liability to **[*]** pursuant to this Section 13.7(d) than the lesser of (i) the scope of liability of BMS to Gilead pursuant to Section 13.7(b) and (ii) the scope of liability of Gilead to **[*]** pursuant to **[*]** of the **[*]** as of the Effective Date.

13.8 Indemnification Procedure .

(a) Each Indemnified Party agrees to give the Indemnifying Party prompt written notice of any Losses or the discovery of a fact (including any Proceeding) upon

which such Indemnified Party intends to base a request for indemnification under Section 11.4, 13.5, 13.6 or 13.7, as the case may be (it being understood and agreed, however, that the failure to give notice as provided in this Section 13.8(a) shall not relieve the Indemnifying Party of any such indemnification obligations except and only to the extent that the Indemnifying Party is actually materially prejudiced as a result of such failure to give notice).

(b) Each Party shall furnish promptly to the other Parties, copies of all papers and official documents received in respect of any Proceedings. The Indemnified Party shall reasonably cooperate as requested by and at the expense of the Indemnifying Party in the defense of any Proceedings.

(c) With respect to any Losses relating solely to the payment of money damages and which shall not result in the Indemnified Party's becoming subject to injunctive or other relief or otherwise adversely affecting the Indemnified Party in any manner, and as to which the Indemnifying Party shall have acknowledged in writing the obligation to indemnify the Indemnified Party under this Agreement, the Indemnifying Party shall have the sole right to defend, settle or otherwise dispose of such Proceeding, on such terms as the Indemnifying Party shall deem appropriate.

(d) With respect to all Losses other than those addressed in Section 13.8(c), and as to which the Indemnifying Party shall have acknowledged in writing the obligation to indemnify the Indemnified Party under this Agreement, the Indemnifying Party shall have the sole right to control the defense of the relevant Proceeding, provided that the Indemnifying Party shall obtain the written consent of the Indemnified Party, which shall not be unreasonably withheld, prior to ceasing to defend, settling or otherwise disposing of any Proceeding if as a result thereof (i) the Indemnified Party would become responsible for the payment of any money damages or other costs (with respect to which the Indemnifying Party has contested or challenged or may contest or challenge its obligation to indemnify), (ii) the Indemnified Party would become subject to injunctive or other equitable relief or any remedy other than the payment of money by the Indemnifying Party or (iii) the Indemnified Party would otherwise be adversely affected.

(e) Furthermore, with respect to each of Section 13.8(c) and 13.8(d), the Indemnifying Party shall be entitled to control the proceeding only if it so notifies the Indemnified Party within thirty (30) days after delivery of the notice by the Indemnified Party under Section 13.8(a).

(f) The Indemnifying Party shall not be liable for any Losses resulting from any settlement or other disposition of a Proceeding by the Indemnified Party which is reached without the written consent of the Indemnifying Party.

(g) The allocation among the Member Parties and the JV of any liability for a Loss or Proceeding, if not otherwise determined in a court of law, shall be considered by the JEC and, if the JEC does not reach agreement on such allocation, by unanimous Member Vote or unanimous written consent of its members, either Member Party shall have the right to refer the dispute to arbitration pursuant to Section 15.6. The dispute

resolution procedures in Section 2.8 shall not apply to any disputes arising under this Section 13.8(g).

(h) The out-of-pocket expenses reasonably incurred by any Indemnified Party in connection with any Proceeding shall be reimbursed on a Calendar Quarter basis by the Indemnifying Party, without prejudice to the Indemnifying Party's right to contest the Indemnified Party's right to indemnification and subject to refund in the event the Indemnifying Party is ultimately held not to be obligated to indemnify the Indemnified Party.

13.9 Limitation on Damages . Except for breaches of Section 12, the Parties shall not be liable to each other for special, indirect, incidental or consequential damages (including, without limitation, for lost profits), whether in contract, warranty, negligence, tort, strict liability or otherwise, arising out of any breach or failure to perform any provision(s) of this Agreement; provided , however , that the parties shall be liable to each other for **[*]** ; and provided , further , that the parties shall be liable to each other for **[*]** and **[*]** , provided that such breaches are intentional or arise out of acts or omissions constituting gross negligence. Nothing in this Section 13.9 is intended to or shall operate to limit a party's obligations of indemnity with respect to losses awarded to third parties in a proceeding under Sections 11.4, 13.5, 13.6 and 13.7.

13.10 Ancillary Agreements . Any reference in this Agreement to an Ancillary Agreement (other than the SDEA) or any obligation under any such Ancillary Agreement, shall not be construed to include within the scope of the indemnification obligations of the Parties under this Agreement any liability arising out of any such Ancillary Agreement or any obligation under any such Ancillary Agreement.

13.11 Employees . The Parties agree that, as among the Parties, all actions taken or omitted to be taken by any employee of a Member Party (or any of its Affiliates) in his or her capacity as a member of the JEC, any Operating Committee or the Pricing Committee, and all other actions taken or omitted to be taken by any employee of a Member Party (or any of its Affiliates) with respect to the Project Activities, shall be attributed only to such Member Party. Accordingly, any claims by the other Member Party or the JV arising out of such actions or inactions shall be asserted directly against the Member Party who is (or whose Affiliate is) such individual's employer, and such other Member Party, or the JV, as the case may be, hereby waives any such claims against such individual.

SECTION 14.
TERM AND TERMINATION

14.1 Term . The term of this Agreement shall commence as of the Effective Date and shall continue until terminated by mutual agreement of the Parties or otherwise in accordance with this Section 14.

14.2 Certain Litigation . This Agreement shall terminate upon notice given by either Member Party to the other Member Party in the event that any U.S. governmental authority seeks or obtains a temporary restraining order or preliminary injunction to enjoin the

transactions contemplated by this Agreement or institutes litigation seeking other relief in respect of such transactions under any Applicable Law in the Territory.

14.3 Termination for NDA Filing Delay . Either Member Party may terminate this Agreement by notice to the other Member Party if either (a) no NDA for the Combination Product in the Field is filed by December 31, 2006, or (b) no NDA for the Combination Product in the Field is approved by December 31, 2007.

14.4 Material Default .

(a) If a Member Party (the "Breaching Member Party") fails to comply with or perform, in any material respect, any of its material obligations contained in this Agreement or the Operating Agreement, or any act or omission by such Member Party causes a failure by the JV to comply with or perform, in any material respect, any of its material obligations contained in this Agreement or the Operating Agreement (any such default, a "Material Default"), then the other Member Party (the "Non-Breaching Member Party") shall have the right to give to the Breaching Member Party notice specifying the nature of the Material Default. The Breaching Member Party shall have a period of sixty (60) days after receipt of such notice to fully cure the Material Default in a manner reasonably acceptable to the Non-Breaching Member Party, and, if it does not do so within such period, the Member Parties shall discuss in good faith appropriate adjustments to or cancellation of the Member Parties' respective obligations under this Agreement to permit the continuation of this Agreement and the JV on a mutually agreeable basis. For the avoidance of doubt, the Non-Breaching Member Party may, in its sole discretion, deliver a notice of Material Default to the Breaching Member Party prior to completion of the dispute resolution procedures set forth in Section 2.8, in which case the sixty (60) day cure period referred to in the preceding sentence shall begin to run upon receipt of such notice and shall run concurrently with such procedures.

(b) If the Breaching Member Party does not cure a Material Default pursuant to Section 14.4(a) and the Member Parties' discussions pursuant to the last sentence of Section 14.4(a) do not lead to a mutually agreeable restructuring of this Agreement, then if the Non-Breaching Member Party and the Breaching Member Party mutually agree that it is both desirable and practicable to withdraw the Combination Product from the market in the Territory, the Non-Breaching Member Party shall have the right to terminate this Agreement upon notice to the Breaching Member Party given within thirty (30) days of the cessation of the Member Parties' discussions pursuant to the last sentence of Section 14.4(a). Any such termination shall be effective upon such withdrawal, and the Member Parties shall cooperate with each other and cause the JV to effect such withdrawal as promptly as practicable under Applicable Law.

(c) Whether or not there is a termination of this Agreement pursuant to Section 14.4(b), the Non-Breaching Member Party shall have the right to seek damages on account of the Material Default in an arbitration pursuant to Section 15.6. The express remedies of the Non-Breaching Member Party pursuant to this Section 14.4 shall be in addition to any other remedies in favor of the Non-Breaching Member Party (or, if applicable, the JV) provided for in this Agreement or the Operating Agreement, as applicable, or under the BMS Guarantee Agreement or Gilead Guarantee Agreement, as applicable.

(d) The Parties acknowledge that each Member Party has entered into this Agreement and the Operating Agreement in reliance on the other Member Party's continued compliance with, and performance of, its obligations under this Agreement and the Operating Agreement. Accordingly, each Member Party agrees that any Material Default may cause severe and irreparable damage to the Non-Breaching Member Party or the JV as applicable, for which money damages would represent an insufficient remedy. In the event of any such Material Default, notwithstanding anything in this Agreement to the contrary, the Non-Breaching Member Party shall be authorized and entitled to seek from any arbitrator under Section 15.6 the remedy of specific performance with respect to any such Material Default, as well as any other relief permitted by Applicable Law and may obtain that relief without making a showing of the insufficiency of money damages. The Breaching Member Party agrees to waive any requirement that the Non-Breaching Member Party post bond as a condition for obtaining any such relief.

14.5 Termination Upon Generic Launch . Either Member Party (the "Continuing Member Party") may terminate this Agreement by notice to the other Member Party (the "Terminated Member Party") in the event that there is the Launch in the Territory of at least one (1) Generic Version of all of the Single Agent Products (or the Double Agent Product) of the Terminated Member Party (a "Generic Version Launch") and the Continuing Member Party delivers notice of termination within thirty (30) days after the Generic Version Launch. Such termination shall be effective on the last day of the Calendar Quarter in which such notice is given.

14.6 Consequences of Termination .

(a) Termination Pursuant to Sections 14.2, 14.3 or 14.4(b) . If a Member Party terminates this Agreement pursuant to Section 14.2, 14.3 or 14.4(b), (i) the license and sublicense grants and Rights of Reference in Section 6 from the Member Parties to the JV shall terminate, (ii) the Rights of Reference and license grants in Section 6.3(a)(1) and 6.3(b)(1) shall survive solely to the extent necessary in order for the licensee Member Party to support the labeling of its Single Agent Product(s) and/or Double Agent Product, as applicable, as approved as of the effective date of such termination, (iii) the license grants in Section 6.3(a)(2) and 6.3(b)(2) shall survive, (iv) the license grants and Rights of Reference in Section 6 from the JV to the Member Parties shall survive until the first date on which the JV has been dissolved and any and all intangible Property (as defined in the Operating Agreement) has been distributed in kind to the Member Parties pursuant to Section 10.2(c) of the Operating Agreement, (v) unless Gilead is the Breaching Member Party, the licenses and other rights granted to Gilead in Sections 6.2(d) and 6.4(d) with respect to the Combination Product outside the Territory, Canada and Europe shall survive (in which event such licenses and other rights shall be deemed to be granted by BMS directly to Gilead), (vi) the JV shall be dissolved in accordance with the Operating Agreement and, in connection with such dissolution, each Combination Product Trademark shall be sold to a Member in a bidding process, (vii) the Operating Agreement and the Ancillary Agreements shall terminate (except as expressly provided in any such agreement) and (viii) each Member Party shall promptly (and in any event within thirty (30) days thereafter) make arrangements for the return or disposal, at the other Member Party's option, of any Confidential Information, in tangible or intangible form (except for (x) one (1) copy which may be retained solely for archival purposes and (y) Confidential Information relating to any surviving licenses and other rights described above).

(b) Termination Pursuant to Section 14.5 . Upon termination of this Agreement pursuant to Section 14.5, the JV shall not be dissolved and the following terms and conditions shall apply:

(i) (A) The license grants and Rights of Reference in Section 6 from the Terminated Member Party to the JV shall survive (except for the trademark license grants in Section 6.6, which shall survive only to the extent necessary to enable the Continuing Member Party to identify the Terminated Member Party on the label of the Combination Product and/or in the Combination Product Regulatory Documentation, as required by Applicable Law); (B) if Gilead is the Terminated Member Party, the license grant in Section 6.7 from the JV to Gilead shall terminate; (C) the license and sublicense grants in Section 6.2 from the JV to the Terminated Member Party shall terminate (other than Section 6.2(a)(3) or 6.2(b)(3), as applicable), and 6.2(c) and, if Gilead is the Terminated Member Party, other than the sublicense grant in Section 6.2(d) which shall be addressed as set forth in clause (F) below); (D) the license grants and Rights of Reference from a Member Party to the other Member Party in Section 6.3 shall survive; (E) the Rights of Reference from the JV to the Terminated Member Party in Section 6.4(b) or 6.4(c) shall survive; and (F) if Gilead is the Terminated Member Party, the sublicenses and Rights of Reference granted to Gilead in Sections 6.2(d) and 6.4(d) with respect to the Combination Product outside the Territory, Canada and Europe shall survive.

(ii) The Continuing Member Party shall pay or cause the JV to pay to the Terminated Party, in the manner set forth in Sections 7.3(b) and (d) and subject mutatis mutandis to Section 7.4, with respect to the period from the effective date of such termination through the **[*]** thereof, an amount determined pursuant to the following formula (with Net Sales and Net Selling Prices in each case being determined for the applicable yearly period):

Net Sales of the Combination Product * ([[Net Selling Price of the Combination Product] – [Net Selling Price of the Continuing Member Party's Single Agent Product or Double Agent Product]]/[Net Selling Price of the Combination Product]), multiplied by the following percentages for the following twelve (12)-month periods commencing with the effective date of termination:

[*]

The JV or other paying Member Party shall pay any amounts owed to a Member Party pursuant to this Section 14.6(b)(ii) within sixty (60) days of the end of the Calendar Quarter in which the relevant Net Sales were invoiced. Each such payment shall be accompanied by a written report, providing a detailed breakdown of the calculation of amounts paid for the relevant period.

(iii) The Terminated Member Party, at its own election (of which it shall promptly notify the Continuing Member Party in writing), shall (pursuant to a license and/or supply agreement containing the following terms and any other terms upon which the Member Parties mutually agree) either (A) enable the Continuing Member Party to Manufacture quantities of EFV or TDF and FTC, as the case may be, in bulk active pharmaceutical ingredient form for use in the Manufacture of the Combination Product for use in

the Territory, in which event the Terminated Member Party shall (1) automatically be deemed to grant a royalty-free, non-exclusive license to the Continuing Member Party (or its Third Party designee, which shall be reasonably acceptable to the Terminated Member Party) under the Terminated Member Party's Patents covering such Manufacture and Information and Inventions used in such Manufacture by or on behalf of the Terminated Member Party, to Manufacture such ingredient(s) for the sole purpose of using such ingredient(s) in the Manufacture of the Combination Product for the Territory, and (2) provide reasonable technical assistance to such Continuing Member Party or Third Party designee (which choice of recipient shall be subject to the prior approval of the Terminated Member Party, such approval not to be unreasonably withheld or delayed), at the Continuing Member Party's expense on the Terminated Member Party's then-current standard terms and conditions; or (B) continue to supply to the JV (or its designee) on a non-exclusive basis such quantities of EFV or TDF and FTC, as the case may be, in bulk active pharmaceutical ingredient form, as such Continuing Member Party may request for Manufacture of the Combination Product for the Territory, at a transfer price of such supply equal to **[*]** of the Cost of Goods. Notwithstanding the foregoing, thereafter, the Terminated Member Party may elect pursuant to clause (B) above to continue to supply the applicable bulk active pharmaceutical ingredient, or determine to cease to Manufacture such ingredient(s) or that it otherwise desires to terminate the aforementioned supply arrangement with the Continuing Member Party, at a time when the Continuing Member Party is still Manufacturing or having Manufactured the Combination Product. In the event that the Terminated Member Party elects to cease the Manufacture of such ingredient(s) or otherwise desires to terminate such supply arrangement, the Terminated Member Party shall (x) give the Continuing Member Party at least **[*]** written notice prior to ceasing such Manufacture or otherwise terminating such agreement, (y) grant to the Continuing Member Party the license described in clause (A)(1) above, and (z) provide to the Continuing Member Party the technical assistance described in clause (A)(2) above. In the event that the Terminated Member Party and the JV or the Continuing Member Party enter into a supply arrangement for bulk active pharmaceutical ingredient(s) pursuant to the first sentence of this Section 14.6(b)(iii), and thereafter the JV or such Continuing Member Party, as the case may be, desires to terminate such supply arrangement (without receiving from the Terminated Member Party the license described in clause (A)(1) above or the technical assistance described in clause (A)(2) above), the JV or such Continuing Member Party, as the case may be, shall provide **[*]** written notice thereof to the Terminated Member Party. The JV and the Continuing Member Party shall be responsible for all Third Party royalties payable by the Terminated Member Party in respect of any supply provided by the Terminated Member Party pursuant to this Section 14.6(b)(iii).

(iv) The name of the JV shall be changed to remove the name of the Terminated Member Party, and the Continuing Member Party shall not, and shall cause the JV not to, include the Trademark or name of the Terminated Member Party on the labeling, packaging and advertising materials of the Combination Product, or otherwise in connection with the JV's business with respect to the Combination Product.

(v) The Terminated Member Party shall promptly (and in any event within thirty (30) days thereafter) make arrangements for the return or disposal, at the Continuing Member Party's option, of any Confidential Information, in tangible or intangible form (except for (x) one (1) copy which may be retained solely for archival purposes and (y)

Confidential Information relating to any surviving licenses and other rights pursuant to Section 14.6(b)(i)).

(vi) Except as otherwise expressly provided in the Operating Agreement and/or any Ancillary Agreement, the Operating Agreement and the Ancillary Agreements shall terminate.

(vii) The JV shall immediately discontinue use of the Terminated Member Party's Trademarks, and the license granted by the Terminated Member Party to the JV to use the Terminated Member Party's Trademarks shall immediately revert to the Terminated Member Party.

(viii) For the avoidance of doubt, the pricing and other provisions contained in Section 5.3 and the **[*]** shall terminate.

14.7 Rights in Bankruptcy . All rights and licenses granted under or pursuant to this Agreement by the JV, BMS or Gilead are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses of right to "intellectual property" as defined under Section 101 of the United States Bankruptcy Code. The Parties agree that the JV, BMS and Gilead, as licensees of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the United States Bankruptcy Code. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against the JV or either Member Party under the United States Bankruptcy Code, the non-subject Parties shall be entitled to a complete duplicate of (or complete access to, as the non-subject Party deems appropriate) any such intellectual property and all embodiments of such intellectual property, which, if not already in their possession, shall be promptly delivered to them (a) upon any such commencement of a bankruptcy proceeding upon a non-subject Party's written request therefor, unless the Party subject to such proceeding elects to continue to perform all of its obligations under this Agreement or (b) if not delivered under clause (a) above, following the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefor by a non-subject Party. The provisions of this Section 14.7 are without prejudice to any rights the non-subject Parties may have arising under the U.S. Bankruptcy Code or other Applicable Law.

14.8 Accrued Rights; Surviving Obligations .

(a) Termination or expiration of this Agreement shall be without prejudice to any rights that shall have accrued to the benefit of a Party prior to such termination or expiration. Such termination or expiration shall not relieve a Party from obligations that are expressly indicated to survive the termination or expiration of this Agreement.

(b) Without limiting anything contained in this Section 14, Sections 1, 3.6, 3.11 (which provision shall be implemented by the Member Parties), 5.10, 6 (as modified by 14.6 or 14.7), 7 (for payments pursuant to Section 14.6(b)(ii)), 8, 9, 11.1, 11.2, 11.3, 11.4, 12, 13.2(e) (as to the second sentence thereof) 13.3(e), (as to the second sentence thereof), 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10, 13.11,14.4(d) (as it applies to other surviving provisions), 14.6, 14.7 (for surviving rights and licenses), 14.8 and 15 shall survive the termination or

expiration of this Agreement for any reason.

SECTION 15.
GENERAL PROVISIONS

15.1 Force Majeure . No Party shall be held liable or responsible to the other Parties or be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement, except for the payment of any amounts under this Agreement, when such failure or delay is caused by or results from causes beyond the reasonable control of the non-performing Party, including, without limitation, fires, floods, embargoes, shortages, epidemics, quarantines, war, acts of war (whether war be declared or not), terrorism, insurrections, riots, civil commotion, acts of God or acts, omissions or delays in acting by any governmental authority. The non-performing Party shall notify the other Parties of such force majeure within five (5) days after such occurrence by giving written notice to the other Parties stating the nature of the event, its anticipated duration, and any action being taken to avoid or minimize its effect. The suspension of performance shall be of no greater scope and no longer duration than is necessary and the non-performing Party shall use, throughout the period of suspension of performance, commercially reasonable efforts to remedy its inability to perform; provided , however , that in the event the suspension of performance continues for ninety (90) days after the date such force majeure commences, the Parties shall meet to discuss in good faith how to proceed in order to accomplish the Collaboration Principles. For purposes of this Agreement a force majeure shall not include a failure to commit sufficient resources, financial or otherwise, to the Project Activities or general market or economic conditions.

15.2 Notice . All notices, requests, reports, statements and other communications to any Party (other than as specified in Section 2.7(c)) shall be in writing, shall refer specifically to this Agreement and shall be delivered personally, sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, to the following respective addresses (or to such other address as may be specified by notice from time to time by the relevant Party):

if to Gilead, to:

Gilead Sciences, Inc.
333 Lakeside Drive
Foster City, CA 94404
Attn: EVP and CFO

with copies to:

Gilead Sciences, Inc.
333 Lakeside Drive
Foster City, CA 94404
Attn: VP and General Counsel

and:

Covington & Burling
One Front Street
San Francisco, CA 94111
Attn: James C. Snipes, Esq.

if to BMS, to:

Bristol-Myers Squibb Worldwide Medicines Group
Route 206 and Province Line Road
Princeton, NJ 08540
Attn: Vice President and Senior Counsel, Corporate and Business Development

with a copy to:

Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004
Attn: Ellen S. Friedenberg, Esq.

Any such communication shall be deemed to have been given (i) when delivered, if personally delivered during the recipient's normal business hours, (ii) on the Business Day after dispatch, if sent by nationally-recognized overnight courier and proof of delivery is obtained, and (iii) on the third (3rd) Business Day following the date of mailing, if sent by mail. It is understood and agreed that this Section 15.2 is not intended to govern the day-to-day business communications necessary between the Parties in performing their duties, in due course, under the terms of this Agreement. Whenever this Agreement requires or permits the giving of notice by a Member Party, such notice may be given by BMS Parent on behalf of itself and BMS Sub, and by Gilead Parent on behalf of itself and Gilead Sub.

15.3 Further Assurances . Each Party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further ministerial, administrative or similar acts and things, including, without limitation, the filing of such assignments, agreements, documents and instruments, as may be necessary or as another Party may reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes hereof, or to better assure and confirm unto such other Party its rights and remedies under this Agreement.

15.4 Successors and Assigns .

(a) The terms and provisions hereof shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns. Except as expressly permitted pursuant to Sections 3.5, 4.1, 4.2 and 5.5, no Member Party may, without the prior written consent of the other Member Party, assign or otherwise transfer any of its rights and interests or subcontract or otherwise delegate any of its obligations under this Agreement; provided , however , that (i) either Member Party, without such consent, may assign its rights and delegate its duties under this Agreement to an Affiliate which is a directly or indirectly wholly-owned subsidiary of Gilead Parent or BMS Parent, as the case may be; provided , however , that

the assigning Member Party shall remain primarily (and not secondarily or derivatively) liable for the full and timely performance by such Affiliate of all its obligations under this Agreement; and provided , further , that, except as set forth in clause (ii) below, such assignment or delegation shall terminate automatically at such time, if any, as such Affiliate ceases to be wholly-owned, directly or indirectly, by Gilead Parent or BMS Parent, as the case may be, and (ii) either Member Party, without such consent, may assign its rights and delegate its duties under this Agreement, whether by contract or operation of law, to a Third Party Acquirer in the event of a Change of Control of such Member Party. Any permitted successor or assignee of rights and/or obligations hereunder (a "Permitted Assignee") shall, in a writing delivered to the other Parties at the time of such assignment, expressly assume performance of such rights and/or obligations. The JV may not assign this Agreement without the prior written consent of the Member Parties. Any purported assignment, transfer, subcontract or delegation by either Member Party or the JV in violation of the terms of this Section 15.4 shall be null and void and of no legal effect.

(b) In the event of any Change of Control of a Member Party (the "Transferring Member Party"), the Transferring Member Party shall give the other Member Party written notice thereof within ten (10) days, identifying such Third Party Acquirer. If at the time of such Change of Control such Third Party Acquirer is marketing in the Territory a Competing Product that was commercially available as of the Effective Date, then upon written notice from the other Member Party at its election to the Transferring Member Party within thirty (30) days of such other Member Party's receiving written notice of such Change of Control, such Third Party Acquirer shall have **[*]** to **[*]** . If such Third Party Acquirer fails to **[*]** : (i) the performance obligations (other than payment obligations) of the Member Parties under this Agreement shall terminate, except to the extent of those minimum obligations reasonably required (A) for the JV to obtain and maintain Approval for the Combination Product in the Territory, (B) for Gilead, to act as agent for selling the Combination Product on behalf of the JV, to perform its obligations with respect to pricing and discounting of the Combination Product pursuant to Section 5.3 and the **[*]** , and (C) for each Member Party to supply to the JV bulk active pharmaceutical ingredient pursuant to Section 4 and the applicable Supply Agreement, (ii) the Commercialization Plan and Budget (including any minimum Commercialization expenditures and/or **[*]**) shall terminate, and (iii) each Member Party shall have the right to Promote, Market and otherwise commercialize the Combination Product in the Territory without coordination with the other Member Party under this Agreement (including, without any obligation to reach agreement on the form of Approved Marketing Materials).

15.5 Governing Law . This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to the rules of conflict of laws thereof.

15.6 Arbitration .

(a) Disputes between the Member Parties, or between a Member Party and the JV, relating to or arising out of the validity, interpretation or construction of, or the compliance with or breach of, this Agreement, the Operating Agreement, any Ancillary Agreement or any other agreement contemplated by this Agreement to which such Member Party (or its Affiliates) and the JV and/or the other Member Party (or its Affiliates) are parties shall (except as otherwise expressly provided in this Agreement, the Operating Agreement, any

Ancillary Agreement or any such other agreement) be referred initially to the JEC as provided in Section 2.8 and, if not resolved as so provided in Section 2.8, thereafter (subject to the limitations in Section 2.8) resolved exclusively through binding arbitration in accordance with the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration, to be held in Washington, D.C. In any proceeding between a Member Party and the JV, the other Member Party shall act on behalf of and in the name of the JV, and any external, out-of-pocket costs (without markup) so incurred by such other Member Party shall be deemed to be JV Expenses and Authorized Expenses. In any proceeding under this Section 15.6, there shall be one arbitrator, except that at the election of either Member Party in writing within ten (10) Business Days of receiving notice of such referral to arbitration, there shall be a panel of three (3) arbitrators. The Member Parties shall appoint such arbitrator(s) by mutual agreement or, if the Member Parties cannot agree on the appointment of such arbitrator(s) within thirty (30) days after receipt of a demand for arbitration, the Member Parties shall have the relevant number of arbitrators with the required qualifications appointed by the CPR Institute for Dispute Resolution, provided that if either Member Party has elected to have a panel of three arbitrators, each Member Party shall have the right to appoint one arbitrator with the required qualifications, and the third arbitrator shall be appointed by the CPR Institute for Dispute Resolution. Each arbitrator shall either have at least ten (10) years of significant management level experience in the biopharmaceutical industry including responsibility for legal matters or have at least ten (10) years of substantial experience as an attorney representing or working with biopharmaceutical clients as either in-house or outside counsel in commercial litigation or transactional matters, shall not be directly or indirectly affiliated with either Member Party or with either Member Party's Affiliates, and shall not have any direct or indirect interest of any kind in the resolution of the relevant issue. This Section 15.6 shall also apply to any dispute properly referred to arbitration in accordance with Section 2.8 or Section 13.8(g) hereof or Section 6.5(d) of the Operating Agreement (with respect to the JEC).

(b) Any fees and expenses payable with respect to an arbitration under this Section 15.6, together with the reasonable legal fees of the prevailing Party, shall be borne by the non-prevailing Party, as determined by the arbitrator(s). All arbitration rulings and awards shall be final and binding on the Parties.

(c) Any dispute referred to binding arbitration pursuant to this Section 15.6 shall be scheduled for discovery, briefing and arguments by the arbitrator(s) so that the decision can be rendered within **[*]** (or as soon thereafter as practicable) after such referral. Each of the Member Parties shall submit to the arbitrator(s) a comprehensive proposal for resolution of the dispute (including, if the arbitration involves an allegation of breach by a Member Party of any of its obligations under this Agreement, the Operating Agreement, any Ancillary Agreement or any other agreement contemplated by this Agreement to which such Member Party (or its Affiliates) and the JV and/or the other Member Party (or its Affiliates) are parties, a proposal for damages), and the arbitrator(s) shall decide in favor of one of the two (2) proposals, without making any modifications thereto. The decision of the arbitrator(s) shall be based on which of the proposals complies most nearly with this Agreement, any relevant Development Plan(s) or Commercialization Plan(s), and any relevant principles reflected in such plans, including, without limitation, the Collaboration Principles.

(d) Nothing in this Agreement, including, without limitation this Section 15.6, shall preclude either Member Party from seeking interim or provisional relief, including a temporary restraining order, preliminary injunction or other interim equitable relief concerning a dispute with the other Member Party, either prior to or during the dispute resolution procedures set forth in this Section 15.6, if necessary to protect the interests of such Member Party. This Section 15.6(d) shall be specifically enforceable.

15.7 Waiver . A Party's failure to enforce, at any time or for any period of time, any provision of this Agreement, or to exercise any right or remedy, does not constitute a waiver of such provision, right or remedy, or prevent such Party thereafter from enforcing any or all provisions and exercising any or all other rights and remedies. The exercise of any right or remedy does not constitute an election or prevent the exercise of any or all rights or remedies, all rights and remedies being cumulative.

15.8 Severability . If any provision of this Agreement, other than the obligation of the JV to make payments pursuant to Section 7.1(a), should be held invalid, illegal or unenforceable in any respect, then, to the fullest extent permitted by Applicable Law, (a) all other provisions hereof shall remain in full force and effect and shall be liberally construed in order to carry out the intent of the Parties as nearly as may be possible, and (b) the Parties agree to use their best efforts to negotiate a provision, in replacement of the provision held invalid, illegal or unenforceable, that is consistent with Applicable Law and accomplishes, as nearly as possible, the original intention of the Parties with respect thereto. To the fullest extent permitted by Applicable Law, each Party hereby waives any provision of law that would render any provision hereof prohibited or unenforceable in any respect.

15.9 Counterparts . This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

15.10 Construction . Except where the context otherwise requires, wherever used the singular shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders. The words "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement (including the Annexes hereto) as an entirety and not to any particular provision. The captions of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. Any reference in this Agreement to a matter or action being subject to the "mutual agreement" or "mutual consultation" of the Member Parties, or words of similar import, shall not be construed as an agreement that the Member Parties shall agree to such matter or action. The language of this Agreement shall be deemed to be the language mutually chosen by the Parties and no rule of strict construction shall be applied against any Party.

15.11 Status of the Parties . Except as set forth expressly in this Agreement or in the Operating Agreement, no Party shall have the right to enter into any agreements or take action on behalf of any other Party, nor shall it represent to any Person that it has any such right or authority. Except for the status of BMS Sub and Gilead Sub as members of the JV, nothing in this Agreement shall be construed as establishing a partnership or joint venture relationship

between the Parties. Each Member Party shall be made a third party beneficiary of all Ancillary Agreements to which the other Member Party is a party, for the purpose of enforcing the JV's rights thereunder.

15.12 Standstill . During the period commencing on the Effective Date and continuing until the fifth anniversary of the Effective Date, BMS shall not, and shall cause the Affiliates of BMS not to:

(a) acquire, or offer or agree to acquire, directly or indirectly, beneficial ownership of any equity securities of Gilead, or any rights or options to acquire such beneficial ownership, or otherwise act in concert with respect to any such securities, rights or options with any Person;

(b) make, or participate in, directly or indirectly, any "solicitation" of "proxies" to vote (as such terms are used in the Regulation 14A promulgated under the United States Securities Exchange Act of 1934, as amended (the "Exchange Act")), become a "participant" in any "election contest" (as such terms are defined in Rule 14a-11 promulgated under the Exchange Act) or initiate, propose or otherwise solicit stockholders of Gilead for the approval of any stockholder proposals;

(c) form, join, participate in, or encourage the formation of, a group (within the meaning of Section 13(d)(3) of the Exchange Act) with respect to any voting securities of Gilead;

(d) deposit any securities of Gilead into a voting trust, or subject any securities of Gilead to any agreement or arrangement with respect to the voting of such securities;

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

(f) seek, or encourage or support any effort, to influence or control the management, Board of Directors, business, or policies of Gilead (it being understood and agreed that this Section 15.12(f) shall not apply to the exercise by BMS of any of its rights and obligations under this Agreement, the Operating Agreement and the Ancillary Agreements as applicable);

(g) encourage or assist any other Person to undertake any of the foregoing actions; or

(h) take any action that could reasonably be expected to require Gilead to make a public announcement regarding the possibility of any of the events described in clauses (a) through (g) of this Section 15.12;

provided , however , that nothing in Sections 15.12(a), (e) or (g) shall be deemed to prohibit BMS from acquiring (i) by merger or stock purchase of more than fifty percent (50%) of the voting securities thereof, a Third Party that has beneficial ownership of equity securities of Gilead (or

rights or options to acquire such beneficial ownership) or (ii) beneficial ownership of up to five percent (5%) of any class of equity securities of Gilead (or rights or options to acquire such beneficial ownership) by or through (1) an employee benefit plan of BMS or any of its Affiliates, (2) a diversified mutual or pension fund managed by an independent investment adviser or pension plan established for the benefit of the employees of BMS or its Affiliates, or (3) any stock portfolios not controlled by BMS or any of its Affiliates that invest in Gilead or any of its Affiliates among other companies; provided that BMS or any of its Affiliates does not, directly or indirectly, request the trustee or administrator or investment adviser of such fund, plan or portfolio to acquire Gilead equity securities; and provided , further , that this Section 15.12 shall be of no further effect and shall not bind BMS in any manner from and after such time, if any, as Gilead shall make a public announcement that it has entered into a letter of intent or definitive agreement with a Third Party Acquirer providing for a Change of Control of Gilead.

15.13 Nonsolicitation of Employees . During the period commencing on the Effective Date and continuing through the term of this Agreement, each Member Party agrees that neither it nor any of its Affiliates that participates in or is responsible for the Development or Commercialization of the Combination Product pursuant to this Agreement shall recruit, solicit or induce any employee of the other Member Party's HIV/Virology Sales Force (including managers) to terminate his or her employment with such other Member Party and become employed by or consult for such other Member Party, whether or not such employee is a full-time employee of such other Member Party, and whether or not such employment is pursuant to a written agreement or is at-will. For purposes of the foregoing, "recruit," "solicit" or "induce" shall not be deemed to mean (x) general solicitations by Third Party placement specialists or firms (e.g., headhunters) or (y) other general solicitations of employment (including responses to general advertisements), in each case ((x) and (y)) not specifically targeted at employees of a Party or any of its Affiliates.

15.14 Entire Agreement . This Agreement (including the Annexes hereto), together with the Operating Agreement, the Ancillary Agreements and the other agreements contemplated by this Agreement (including without limitation the Safety Data Exchange Protocol), constitutes, on and as of the Effective Date, the entire agreement of the Parties with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between the Parties with respect to such subject matter (including the Mutual Technology Transfer Agreement entered into by Bristol-Myers Squibb Company and Gilead Sciences, Inc. as of February 5, 2004 (the "MTTA") and the Mutual Confidential Disclosure Agreement entered into by and between Bristol-Myers Squibb Company and Gilead Sciences, Inc. as of December 12, 2003, as amended) are hereby superseded in their entireties; provided , however , that any rights and obligations of the Parties under the MTTA and such Mutual Confidential Disclosure Agreement that have accrued as of the Effective Date shall survive. This Agreement shall not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the Parties (or prior to the Effective Date, by Gilead and BMS).

15.15 Consent to Jurisdiction . Each Party, for the purpose of enforcing an award under Section 15.6 or for seeking injunctive or other equitable relief as permitted by Section 12.8, 14.4(d) or 15.6(d), (a) irrevocably submits to the non-exclusive jurisdiction of the United States District Court for the District of Columbia (the "Court"), for purposes of any action, suit

or other proceeding arising out of this Agreement, the Operating Agreement and any Ancillary Agreement, and (b) agrees not to raise any objection at any time to the laying or maintaining of the venue of any such action, suit or proceeding in any of such Court, irrevocably waives any claim that such action, suit or other proceeding has been brought in an inconvenient forum and further irrevocably waives the right to object, with respect to such action, suit or other proceeding, that such Court does not have any jurisdiction over such Party. Each Party further agrees that service or any process, summons, notice or document by U.S. registered mail to such Party's notice address provided for in this Agreement shall be effective service of process for any action, suit or proceeding in the Court with respect to any matters to which it has submitted to jurisdiction in this Section 15.15.

15.16 Third Parties . Except as set forth in Sections 13.5, 13.6, and 13.7 as to those Third Parties expressly referred to therein, the agreements, covenants and representations contained herein are for the benefit of the Parties only and are not for the benefit of any Third Parties.

[Signatures to follow on page 104]

[Page intentionally left blank]

[Page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Collaboration Agreement to be duly executed and delivered as of the date first above written.

GILEAD SCIENCES, INC.

By: /s/ John C. Martin
John C. Martin, Ph.D.
President and Chief Executive Officer

BRISTOL-MYERS SQUIBB COMPANY

By: /s/ Tamar Howson
Tamar Howson
Senior Vice President, Corporate and Business Development

GILEAD HOLDINGS, LLC

By: /s/ John F. Milligan
John F. Milligan, Ph.D.
President

E.R. SQUIBB & SONS, L.L.C.

By: /s/ Charles Linzner
Charles Linzner
Assistant Secretary

BRISTOL-MYERS SQUIBB & GILEAD SCIENCES, LLC

By Gilead Holdings, LLC, its Member

By: /s/ John F. Milligan
John F. Milligan, Ph.D.
President

By E.R. Squibb & Sons, L.L.C., its Member

By: /s/ Charles Linzner
Charles Linzner
Assistant Secretary

ANNEXES TO COLLABORATION AGREEMENT

Annex A - Initial Committee Members and Alliance Managers

GILEAD SUB	BMS SUB
Joint Executive Committee (JEC) [*]	**Joint Executive Committee (JEC)**
Joint Development Committee (JDC) [*]	**Joint Development Committee (JDC)**
Joint Commercialization Committee (JCC) [*]	**Joint Commercialization Committee (JCC)**
Joint Finance Committee (JFC) [*]	**Joint Finance Committee (JFC)**
Alliance Manager [*]	**Alliance Manager**

* denotes initial chairperson

Annex B - Development Plan and Development Budget as of Effective Date

[*]

[*]

- Patents exclusively licensed by BMS from Merck

[*]

[*]

Annex F – Gilead Licensed Trademarks

Country	Mark	App. / Reg. No.	Filing / Reg. Date	Class
USA	TRUVADA	Application No. 78/239,720	Filed 4/18/03	5
USA	VIREAD	2,586,295	06/25/2002	5
USA	EMTRIVA	2,852,092	06/08/2004	5

Annex G – BMS Licensed Trademarks

Country	Mark	App. / Reg. No.	Filing / Reg. Date	Class
U.S.	SUSTIVA	2,496,476	10/9/2001	5
Puerto Rico	SUSTIVA	39883	2/28/97	5

Annex H – Quarterly Detail Report

For illustrative purposes only

Period Ending: 06/30/2006

Detail Activity Report

Run Date: 07/15/2006

Product: *FDC "Brand X"*

[*]

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Annex I - Manner of Calculation of Net Selling Price

The Net Selling Price for a product for a relevant period for a country shall be expressed in dollars per daily dose for such product and shall be equal to the quotient of (i) the aggregate Net Sales for such country of such product for such period that are recognized as revenue (under United States generally accepted accounting principles in effect from time to time, as consistently applied), divided by (ii) the number of daily doses of such product in units for which revenue may be recognized (under United States generally accepted accounting principles in effect from time to time, as consistently applied) for such period that may be sold or used **[*]** in such country plus the number of daily doses of such product in **[*]** for such country shipped during such period, provided, however, that consistent with the definition of Net Sales, **[*]** . The Parties' intent is that the practices of BMS and Gilead in calculation of Net Sales shall be harmonized in the process of calculating Net Selling Price, such that (a) any deductions, payments, rebates or other compensations made or given by BMS or Gilead in connection with or in respect of sales of such products shall be treated as a deduction from gross amount invoiced in the calculation of Net Sales, and (b) if both BMS and Gilead make payments or provide other compensation for a similar purpose with respect to a product but only one of them treats that item for accounting purposes as a deduction from revenues, then for purposes of calculation of Net Selling Price under this Annex I that item shall be a deduction from gross amount invoiced in the calculation of Net Sales for both parties.

Example:
[*]

Annex J - Calculation of Cost of Goods

“Cost of Goods” means with respect to manufacture or acquisition of a product, an amount equal to **[*]** . The calculation of Cost of Goods for specific products will be mutually agreed in writing by the Members and updated for each Calendar Year.

[*]

[*]

[*]

[*]

Bristol-Myers Squibb Contacts
David Rosen, Media
(609) 252-5675

John Elicker, Investors
(212) 546-3775

Gilead Sciences Contacts
Amy Flood, Media
(650) 522-5643

Susan Hubbard, Investors
(650) 522-5715

BRISTOL-MYERS SQUIBB AND GILEAD SCIENCES ESTABLISH JOINT VENTURE TO DEVELOP AND COMMERCIALIZE FIXED-DOSE COMBINATION OF THREE HIV MEDICINES

First Collaboration to Develop a Once-Daily Antiretroviral Fixed-Dose Regimen

New York, NY and Foster City, CA, DATE, 2004 – Bristol-Myers Squibb Company (NYSE: BMY) and Gilead Sciences, Inc. (Nasdaq: GILD) today announced details of a joint venture to develop and commercialize the fixed-dose combination of Bristol-Myers Squibb's Sustiva ® (efavirenz) and Gilead's Truvada ™ (emtricitabine and tenofovir disoproxil fumarate) in the United States. If approved, the new product would be the first complete Highly Active Antiretroviral Therapy (HAART) treatment regimen for HIV available in a fixed-dose combination taken once daily. Fixed-dose combinations contain multiple medicines formulated together and may help simplify HIV therapy for patients and providers. The joint venture established by the two companies is the first of its kind in the field of HIV therapy.

The work necessary to co-formulate Sustiva and Truvada into a once-daily combination product has been ongoing throughout most of 2004 and will continue into 2005. Through the joint venture – Bristol-Myers Squibb & Gilead Sciences, LLC – the companies will work in partnership to complete development and U.S. regulatory filings for this fixed-dose regimen. Subject to receiving marketing approval of the fixed-dose regimen, the companies would share responsibility for commercializing the product in the United States. Both companies will provide funding and field-based sales representatives in support of promotional efforts for the combination product. Bristol-Myers Squibb and Gilead will receive revenues from future net sales at percentages relative to the contribution represented by their individual products that comprise the fixed-dose combination.

Guidelines issued by the U.S. Department of Health and Human Services (DHHS) list the combination of emtricitabine, tenofovir disoproxil fumarate and efavirenz as one of the preferred non-nucleoside reverse transcriptase inhibitor (NNRTI)-based treatments for use in appropriate patients that have never taken anti-HIV medicines before. It is important that patients be aware that individual HIV medications must be taken as part of combination regimens, and that they do not cure HIV infection or prevent passing HIV to others.

"Gilead and Bristol-Myers Squibb share a steadfast commitment to addressing the needs of people living with HIV/AIDS around the world, and today's announcement signals significant progress toward our

common goal," commented John C. Martin, PhD, president and chief executive officer, Gilead Sciences. "This landmark partnership reflects the dedication Gilead and Bristol-Myers Squibb bring to delivering simplified therapy to physicians and patients. We look forward to working with the Bristol-Myers Squibb team to ensure this novel therapeutic advancement reaches physicians and people living with HIV/AIDS as rapidly as possible."

"For more than a decade, Bristol-Myers Squibb has been a leader in the field of HIV with significant investments in innovative scientific research and an unwavering commitment to finding new and better treatment options to help improve the lives of people with HIV," said Peter R. Dolan, chairman and chief executive officer, Bristol-Myers Squibb Company. "We are pleased to be leveraging our leadership in HIV through this collaboration with Gilead to help advance the management of the disease through the development of potentially more convenient treatment options."

Earlier in 2004, U.S. Secretary of Health and Human Services Tommy Thompson addressed the need for new products to help advance and simplify treatment for people with HIV/AIDS, encouraging members of industry to work together to create fixed-dose combinations that would help achieve these goals. Additionally, earlier this year the U.S. Food and Drug Administration issued new guidelines to expedite the approval of new combination products for HIV.

"The availability of simplified treatment regimens for HIV/AIDS is important to our ability to make progress in the fight against the disease," Secretary Thompson said. "I am pleased to see the collaboration and efforts of Bristol-Myers Squibb and Gilead. This partnership to create a fixed-dose combination of three HIV medications represents an important advance in our collective effort to deliver simplified therapy for people living with HIV."

Important Safety Information About Sustiva

Sustiva is a prescription medicine used in combination with other medicines to treat people who are infected with the human immunodeficiency virus type 1 (HIV-1). Sustiva does not cure HIV or help prevent passing HIV to others.

Sustiva should not be taken with Hismanal ® (astemizole), Propulsid ® (cisapride), Versed ® (midazolam), Halcion ® (triazolam), ergot medicines (for example, Wigraine ® and Cafergot ®), or Vfend ® (voriconazole). This list of medicines is not complete. Patients should discuss all prescription and non-prescription medicines, vitamin and herbal supplements, or other health preparations (particularly St. John's wort) they are taking or plan to take with their healthcare provider. Patients taking Sustiva should tell their doctor right away if they have any side effects or conditions including: severe depression, strange thoughts, or angry behavior, which have been reported in a small number of patients. A few reports of suicide have been made, but it is not known if Sustiva was the cause. Patients should tell their doctor if they have a history of mental illness or are using drugs or alcohol. Dizziness, trouble sleeping, drowsiness, trouble concentrating, and/or unusual dreams are common. These feelings tend to go away after taking Sustiva for a few weeks.

Women should not become pregnant or breastfeed while taking Sustiva. Rash is a common side effect that usually goes away without any change in treatment. Rash may be a serious problem in some children. If a child develops a rash, their doctor should be contacted right away. Patients should tell their doctor if they have liver disease, have ever had seizures, or are taking medicine for seizures as tests to check the liver or drug levels in the blood may be needed. Changes in body fat have been seen in some patients taking HIV medicines, however, the cause and long-term effects of these changes are not known at this time. Other common side effects include: tiredness, upset stomach, vomiting and diarrhea. Taking Sustiva with food increases the amount of medicine in the body, which may increase the frequency of side

effects. Sustiva should be taken on an empty stomach, preferably at bedtime, which may make some side effects less bothersome. United States Full Prescribing Information is available at www.sustiva.com.

About Truvada

Truvada combines Emtriva ® (emtricitabine) and Viread ® (tenofovir disoproxil fumarate) in one tablet taken once a day in combination with other antiretroviral agents. In the United States, Truvada is indicated in combination with other antiretroviral agents (such as non-nucleoside reverse transcriptase inhibitors or protease inhibitors) for the treatment of HIV-1 infection in adults. Safety and efficacy studies using Truvada tablets or using Emtriva and Viread in combination are ongoing.

Both components of Truvada have been studied individually, as part of multi-drug regimens and have been found to be safe and effective. Since Emtriva and lamivudine (3TC) are comparable in their structure, resistance profiles, and efficacy and safety as part of multi-drug regimens, existing data from the use of lamivudine and Viread in combination have been extrapolated to support use of Truvada tablets for the treatment of HIV-1 infection in adults. Therefore, in treatment-naïve patients, Truvada should be considered as an alternative to the combination of Viread and lamivudine for those patients who might benefit from a once-daily regimen. In treatment-experienced patients, the use of Truvada should be guided by laboratory testing and treatment history.

There are no study results demonstrating the effect of Truvada on clinical progression of HIV-1, and it is not recommended that Truvada be used as a component of a triple nucleoside regimen.

Truvada should not be used with Emtriva or Viread, or other drugs containing lamivudine, including Combivir ®, Epivir ®, Epivir-HBV ®, Epzicom ™ or Trizivir ®. Two-hundred eighty-three patients have received combination therapy with Emtriva and Viread with either a non-nucleoside reverse transcriptase inhibitor or protease inhibitor for 24 to 48 weeks in ongoing clinical studies. Based on these limited data, no new patterns of adverse events were identified and there was no increased frequency of established toxicities. For additional safety information about Emtriva or Viread in combination with other antiretroviral agents, please see "About Emtriva" and "About Viread," below.

Lactic acidosis and severe hepatomegaly with steatosis, including fatal cases, have been reported with the use of nucleoside analogues alone or in combination with other antiretrovirals. Viread, Emtriva and Truvada are not indicated for the treatment of chronic hepatitis B virus (HBV) infection and the safety and efficacy of these drugs has not been established in patients co-infected with HBV and HIV. Severe acute exacerbations of hepatitis B have been reported in patients who have discontinued Viread or Emtriva. Hepatic function should be monitored closely with both clinical and laboratory follow-up for at least several months in patients who discontinue Viread, Emtriva or Truvada and are co-infected with HIV and HBV. If appropriate, initiation of anti-hepatitis B therapy may be warranted.

Changes in body fat have been observed in patients taking Viread, Emtriva, Truvada and other anti-HIV medicines. The cause and long term health effect of these conditions are unknown.

About Viread

In the United States, Viread is indicated in combination with other antiretroviral agents for the treatment of HIV-1 infection. This indication is based on analyses of plasma HIV-1 RNA levels and CD4 cell counts in controlled studies of Viread in treatment-naïve adults and in treatment-experienced adults. There are no study results demonstrating the effect of Viread on clinical progression of HIV-1. The use of Viread should be considered for treating adult patients with HIV-1 strains that are expected to be susceptible to tenofovir as assessed by laboratory testing or treatment history.

Drug interactions have been observed when didanosine, atazanavir or lopinavir/ritonavir is co-administered with Viread and dose adjustments may be necessary. Data are not available to recommend a dose adjustment of didanosine for patients weighing less than 60 kg. Patients on atazanavir or lopinavir/ritonavir plus Viread should be monitored for Viread-associated adverse events which may require discontinuation. When co-administered with Viread, it is recommended that atazanavir 300 mg be given with ritonavir 100 mg. Atazanavir without ritonavir should not be co-administered with Viread.

Renal impairment, including serious cases, has been reported. Renal impairment occurred most often in patients with underlying systemic or renal disease or in patients taking concomitant nephrotoxic agents, though some cases have appeared in patients without identified risk factors. Decreases in bone mineral density (BMD) at the lumbar spine and hip have been seen with the use of Viread. The clinical significance of changes in BMD and biochemical markers is unknown and follow-up is continuing to assess long-term impact. The most common adverse events and those occurring in more than 5 percent of patients receiving Viread with other antiretroviral agents in clinical trials include asthenia, pain, abdominal pain, headache, nausea, diarrhea, vomiting, rash (rash, pruritis, maculopapular rash, urticaria, vesiculobullous rash and pustular rash), flatulence, dizziness and depression. Less than 1 percent of patients discontinued participation because of gastrointestinal events.

About Emtriva

In the United States, Emtriva is indicated, in combination with other antiretroviral agents, for the treatment of HIV-1 infection in adults. This indication is based on analyses of plasma HIV-1 RNA levels and CD4 cell counts from controlled studies of 48 weeks duration in antiretroviral-naïve patients and antiretroviral-treatment-experienced patients who were virologically suppressed on an HIV treatment regimen. In antiretroviral-treatment-experienced patients, the use of Emtriva may be considered for adults with HIV strains that are expected to be susceptible to Emtriva as assessed by genotypic or phenotypic testing.

Adverse events that occurred in more than 5 percent of patients receiving Emtriva with other antiretroviral agents in clinical trials include abdominal pain, asthenia (weakness), headache, diarrhea, nausea, vomiting, dizziness and rash (rash, pruritis, maculopapular rash, urticaria, vesiculobullous rash, pustular rash and allergic reaction). Approximately 1 percent of patients discontinued participation because of these events. All adverse events were reported with similar frequency in Emtriva and control treatment groups with the exception of skin discoloration which was reported with higher frequency in the Emtriva treated group. Skin discoloration, manifested by hyperpigmentation on the palms and/or soles, was generally mild and asymptomatic. The mechanism and clinical significance are unknown.

About Bristol-Myers Squibb

Bristol-Myers Squibb is a global pharmaceutical and related healthcare products company whose mission is to extend and enhance human life. For more than a decade, Bristol-Myers Squibb Company has been a global leader in the science of infectious diseases and has invested consistently in innovative research leading to the development of important treatments for people with HIV/AIDS. Visit Bristol-Myers Squibb on the World Wide Web at www.bms.com.

About Gilead Sciences

Gilead Sciences is a biopharmaceutical company that discovers, develops and commercializes therapeutics to advance the care of patients suffering from life-threatening diseases worldwide. The company has seven marketed products and focuses its research and clinical programs on anti-infectives. Headquartered in Foster City, CA, Gilead has operations in North America, Europe and Australia. Visit Gilead on the World Wide Web at www.gilead.com.

Forward-Looking Statements

Bristol-Myers Squibb Forward-Looking Statement

This press release contains "forward-looking statements" as that term is defined in the Private Securities Litigation Reform Act of 1995 regarding product development. Such forward-looking statements are based on current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and could cause actual outcomes and results to differ materially from current expectations. Among other risks, there can be no guarantee that the combination product will be submitted for regulatory approval, will receive regulatory approval, or, if approved, will be commercially successful. No forward-looking statement can be guaranteed. Forward-looking statements in this press release should be evaluated together with the many uncertainties that affect Bristol-Myers Squibb's business, particularly those identified in the cautionary factors discussion in Bristol-Myers Squibb's Annual Report on Form 10-K/A for the year ended December 31, 2003 and in our Quarterly Reports on Form 10-Q. Bristol-Myers Squibb undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise.

Gilead Forward-Looking Statement

This press release contains "forward-looking statements" as that term is defined in the Private Securities Litigation Reform Act of 1995. The forward-looking statements include statements regarding approval and licensure of the combination product. These statements involve risks and uncertainties, which may cause results to differ materially from those set forth in the statements, including the risks related to the ability of the companies to successfully complete ongoing studies to support approval of the combination product and the willingness of regulatory authorities to grant regulatory approval for the combination product based on data from those studies. No forward-looking statement can be guaranteed, and actual results may differ materially from those projected. Gilead undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise. Forward-looking statements in this press release should be evaluated together with the many uncertainties that affect Gilead's business, particularly those mentioned in the cautionary statements in the company's Form 10-K for the year ended December 31, 2003, and in periodic reports on Form 10-Q and Form 8-K.

- Annual Budget Reports: **[*]**
- Quarterly Projection Reports: (No later that **[*]**
- Weekly Sales Reports by **[*]** .
- Actual Reports: (all times based on **[*]**

To be provided by BMS on an annual basis:

[*]

To be provided by Gilead on an annual basis:

[*]

To be provided by the JV (or its designee) on an annual basis:

[*]

[*]

This term sheet focuses on certain key aspects of the Services Agreement. It does not discuss all the terms and conditions that would be included in the definitive Services Agreement to be entered into by the JV and Gilead Parent pursuant to Section 5.2 of the Collaboration Agreement.

1. Agreement : Distribution Services Agreement ("Services Agreement") between the JV and Gilead Parent, pursuant to which Gilead Parent will provide certain distribution services for the Combination Product in the Territory on behalf of the JV.

2. Distribution Services : Distribution services to be provided by Gilead Parent on behalf of the JV will include, without limitation,

- **Inventory management and control:**
  [*]

- **Warehousing and storage:**
  [*]

- **Orders:**
  [*]

- **Invoicing; collection of sales proceeds:**
  [*]

- **Customer relations and services; returns:**
  [*]

The JCC will oversee Gilead Parent's activities under the Services Agreement.

Gilead Parent will provide the distribution services in accordance with customary practice in the biopharmaceutical industry, as well as with GSP, GMP and applicable law.

3. Compensation :

[*]

4. Term :

The Services Agreement will continue for the term of the Collaboration Agreement, unless earlier terminated in accordance with Article 14 of the Collaboration Agreement.

5. Miscellaneous :

The Services Agreement will contain additional provisions relating to matters such as **[*]** and such other provisions, consistent with the provisions of the Collaboration Agreement, upon which BMS and Gilead Parent mutually agree.

[*]

African Countries:

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Comoros
Côte d'Ivoire
Democratic Republic of Congo
Djibouti
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Republic of Congo
Rwanda
São Tomé and Príncipe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sudan
Swaziland
Tanzania
Togo
Tunisia
Uganda
Zambia
Zimbabwe

Non-African Countries on the United Nations List of Least Developed Countries:

Afghanistan
Antigua and Barbuda
Bahamas
Bangladesh
Barbados
Belize
Bhutan

Bolivia
Cambodia
Cuba
Dominica
Dominican Republic
El Salvador
Fiji
Grenada
Guatemala
Guyana
Haiti
Honduras
Indonesia
Iran, Islamic Rep. of
Iraq
Jamaica
Jordan
Kiribati
Laos
Lebanon
Maldives
Mongolia
Myanmar
Naura
Nepal
Nicaragua
Oman
Pakistan
Papua New Guinea
Philippines
Saint Kitts and Nevis
Saint Lucia
Samoa
Saudia Arabia
Solomon Islands
Sri Lanka
St. Vincent and the Grenadines
Suriname
Syrian Arab Republic
Timor-Leste
Trinidad and Tobago
Tonga
Tuvalu
Vanuatu
Vietnam
Yemen

Exhibit 10.77

FOURTH AMENDMENT TO LICENSE AGREEMENT

This Fourth Amendment to License Agreement ("Fourth Amendment") is effective as of the 19 th day of April, 2004 (the "Effective Date"), by and among Gilead Sciences, Inc. (formerly Triangle Pharmaceuticals, Inc.), a Delaware corporation having its principal place of business at 333 Lakeside Drive, Foster City, CA 94404 ("COMPANY") and Emory University, a not-for-profit Georgia corporation with offices at 1380 South Oxford Road, N.E., Atlanta, Georgia 30322 ("LICENSOR"), and amends certain terms of that certain License Agreement, dated April 17, 1996, between LICENSOR and COMPANY, as amended by the First Amendment to License Agreement, dated May 6, 1999 ("First Amendment") and as further amended by the Second Amendment to License Agreement dated July 10, 2000 ("Second Amendment") and as further amended by the Third Amendment to the License Agreement dated May 31, 2002 (such License Agreement as amended by the First, Second and Third Amendments is referred to herein as the "Agreement").

WHEREAS LICENSOR and COMPANY wish to clarify a fair and equitable formula for Net Selling Price of Licensed Products which contain as their active ingredients both Licensed Compounds and compounds other than Licensed Compounds;

WHEREAS LICENSOR and COMPANY wish to clarify definitions related to an expanded access program such as COMPANY'S Global Access Program;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties, COMPANY and LICENSOR hereby agree as follows:

1. Definitions.

1.1. Use of Existing Definitions . All terms used in this Fourth Amendment and not otherwise defined herein shall have the same meanings ascribed to them in the Agreement.

1.2. Amendment of Definitions . The Agreement is hereby amended to provide that:

1.2.1. Sections 1.20 and 1.21 and 1.25 are deleted in their entirety and replaced with the following:

"1.20 "Net Selling Price" of a product (including a Licensed Product) shall mean, with respect to a particular fiscal quarter, the gross invoice price (i.e. the total invoiced price therefore prior to any deductions made pursuant to clauses (i) through (iv)) paid by a purchaser of such product (including Distributors), to COMPANY, an Affiliate or sublicensee of COMPANY and their sublicensees or any other party authorized by COMPANY to sell that product (which shall not include Distributors) (collectively the "Sellers"), plus, if applicable, the value of all properties and services received in consideration of a Sale of such product, less only:

(i) discounts, including cash and quantity discounts, charge-back payments and rebates granted to managed health care organizations or to federal, state and local governments, their agencies, purchasers and reimbursers or to trade customers;

(ii) credits or allowances actually granted upon claims, damaged goods, rejections or returns of such Licensed Products, including recalls;

(iii) freight, postage, shipping, transportation and insurance charges actually allowed or paid for delivery of Licensed Products to the extent billed; and

(iv) taxes (other than income taxes), duties or other governmental charges levied on, absorbed or otherwise imposed on sale of such Licensed Products, including without limitation value-added taxes, or other governmental charges otherwise measured by the billing, when included in the billing, as adjusted for rebates and refunds.

(a) Notwithstanding the foregoing in this Section 1.20, amounts received by COMPANY, its Affiliates or sublicensees for the sale of Licensed Products among COMPANY, its Affiliates and sublicensees for resale shall not be included in the computation of Net Selling Price hereunder.

(b) For purposes of this Section 1.20, "Distributor" shall mean any third party (i) to which a Seller has granted (at any time during the term) a right to sell or distribute a Licensed Product, (ii) that sells Licensed Products to hospitals and/or pharmacies for their sale to or use with patients (rather than to other third parties for resale to hospitals and/or pharmacies for their sale to or use with patients), and (iii) that does not make payments to COMPANY or such COMPANY Affiliate that are calculated on the basis of a percentage of, or profit share on, such third party's sales of Licensed Products. For purposes of calculating Net Selling Price, no Distributor shall be deemed to be a sublicensee of COMPANY or its Affiliates. Net Selling Price for the quantities of License Product sold by Distributors shall be calculated based on the amount invoiced the Distributors by COMPANY and/or its Affiliates and/or sublicensees of Affiliates and COMPANY rather than by the Distributors to their customers.

(c) Where Licensed Product is sold in the form of a combination product containing one or more active ingredients in addition to a Licensed Compound ("Combination Product"), Net Selling Price for such

Combination Product for purposes of determining royalties payable under this Agreement will be calculated by multiplying the actual Net Selling Price of such Combination Product by the fraction A/(A+B) where A is the Net Selling Price for the stock keeping unit most comparable in formulation and dosing to that used for the Combination Product of the Licensed Product containing the relevant Licensed Compound as the sole active ingredient, if sold separately, in such country during the relevant fiscal quarter, and B is the Net Selling Price for the stock keeping unit, most comparable in formulation and dosing to that used for the Combination Product, of any other active ingredient, if sold separately, in such country during the relevant fiscal quarter. For clarity, if there are three or more active ingredients (including the Licensed Compound), additional B terms calculated in the same manner, shall be included in the denominator so that such fraction shall be A/(A+B1+ B2+…). If, on a country-by-country basis, one or more of the other active ingredients in the Combination Product are not sold separately in said country, Net Selling Price for the purpose of determining royalties payable under this Agreement for the Combination Product shall be calculated by multiplying the actual Net Selling Price of such Combination Product Combination Product of the Licensed Product containing the relevant Licensed Compound as the sole active ingredient, if sold separately, in such country during the relevant fiscal quarter and C is the Net Selling Price for the Combination Product in such country during the relevant fiscal quarter. If, on a country-by-country basis, the Licensed Product containing a Licensed Compound as the sole active ingredient is not sold separately in said country during the relevant fiscal quarter but one or more of the other active ingredients in the Combination Product are sold separately in said country during the relevant fiscal quarter, the Net Selling Price for the Combination Product shall be calculated by multiplying the actual Net Selling Price of such Combination Product by the fraction (1-(D/C)) where D is the Net Selling Price for the stock keeping unit most comparable in formulation and dosing to that used for the Combination Product of the product containing the other active ingredient as the sole active ingredient and C is the Net Selling Price for the Combination Product in such country during the relevant fiscal quarter. If, on a country-by-country basis, the Licensed Product containing a Licensed Compound as the sole active ingredient is not sold separately and one or more of the other active ingredients in the Combination Product are not sold separately in such country during the relevant fiscal quarter Net Selling Price for the purposes of determining royalties of the Combination Product shall be deemed to be the Net Selling Price of such Combination Product multiplied by a fraction, the numerator of which is the number of Licensed Compounds in such Combination Product and the denominator of which is the number of all active ingredients in such Combination Product."

"1.21 Intentionally left blank."

"1.25 "Sale" or "Sold" shall mean the sale, transfer, exchange or other disposition of Licensed Products whether by gift or otherwise, subsequent to Registration in a given country (if such Registration is required) by a Seller to make such sale, transfer, exchange or disposition, to any party that is not a Seller. Sales of Licensed Products shall be deemed consummated upon the first to occur of: (a) receipt of payment from the purchase; (b) delivery of Licensed Products to the purchaser or a common carrier; (c) release of Licensed Products from consignment; or (d) if otherwise transferred, exchanged or disposed of, whether by gift or otherwise, when such transfer, exchange, gift or other disposition occurs. Notwithstanding the foregoing definition of Sale, to the extent COMPANY distributes any Licensed Product under a Treatment IND or through an expanded access program or the Global Access Program, only to the extent that the actual Net Selling Price exceeds Fully Absorbed Costs therefor will such distribution be considered a Sale. If the actual Net Selling Price exceeds the Fully Absorbed Costs, the distribution shall be deemed to be a Sale with a deemed Net Selling Price (prior to any application of Section 1.20(c)) for purposes of Section 3.4 of the difference between the actual Net Selling Price and the Fully Absorbed Cost therefor."

1.2.2 New Sections 1.29 and 1.30 are hereby added.

"1.29: "Global Access Program" shall mean a program through which COMPANY provides Licensed Products to government agencies, not-for-profit non-governmental organizations, physicians, pharmacies or patients in identified countries at reduced costs. The countries are identified on Exhibit C hereto, which Exhibit may be amended from time to time by the Parties."

"1.30: "Fully Absorbed Costs" shall mean an amount equal to COMPANY's costs directly allocated to the production of Licensed Products distributed under a Treatment IND or through an expanded access program or the Global Access Program, consisting of: (i) direct labor, including all resources utilized in support of COMPANY's manufacturing operations; (ii) materials; (iii) a reasonable allocation of overhead, facilities expense (including depreciation over the expected life of the buildings and equipment), and administrative costs directly in support of COMPANY's manufacturing operations and such Treatment IND distribution program, expanded access program or the Global Access Program, if applicable, calculated by COMPANY in accordance with reasonable cost accounting methods consistent with the way COMPANY allocates such costs to other products; and (iv) third-party costs."

2. Amendment of Other Provisions of the Agreement . The provisions of the Agreement, other than definitions, are hereby amended as follows:

2.1. Section 3.5(d) is deleted in its entirety and replaced with the following:

"(d) Commencing upon FDA Registration for a Licensed Product and ending upon expiration of the second calendar year following the year in which such FDA Registration is granted, COMPANY may credit solely against running royalties (paid pursuant to Section 3.4), all reasonable costs incurred by COMPANY after the date hereof (including any reimbursements to LICENSOR pursuant to Section 7.1 for inter partes Patent Prosecution Activities, as defined therein) in connection with any litigation, interference, opposition or other inter partes action pertaining to the validity, enforceability, allowability or subsistence of the Licensed Patents or whether COMPANY's practice of the Licensed Patents infringes a third party patent. Until the end of such second calendar year, the amount of such credits shall not exceed in any year one-half (½) of the royalty payments due hereunder in such year. Commencing upon the third calendar year following the year in which such FDA registration is granted, such credits shall not exceed in any year one-half (½) of the Annual Minimum payments due in such year. Such costs shall not be credited against any other payments due to LICENSOR under this Agreement."

2.2. In Section 4.2 (Right to Audit), first sentence, insert "including records reasonably necessary to verify of the accuracy of Net Selling Prices and Fully Absorbed Costs, " prior to "required to be furnished by COMPANY pursuant to Section 4.1 of the Agreement".

3. General Terms .

3.1 Unamended Terms of Agreement Remain in Effect . Except as expressly amended hereby, the remaining terms of the Agreement shall remain in full force and effect.

3.2 Entire Agreement . The Agreement, as amended by this Fourth Amendment, constitutes the entire agreement between LICENSOR and COMPANY regarding the subject matters contained herein.

3.3 Conflicts . In the event of any conflict between the provisions of the Agreement and this Fourth Amendment, the provisions of this Fourth Amendment shall govern and control.

3.4 Governing Law . This Fourth Amendment shall be governed by, and construed in accordance with, the laws of the State of Georgia without regard to its conflicts of laws principles.

3.5 Counterparts . This Fourth Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

3.6 Survival of Provisions . If any provision of this Fourth Amendment is for any reason held to be ineffective, unenforceable or illegal, such condition shall not affect the validity or enforceability of any of the remaining portions hereof; provided, further, that the parties shall negotiate in good faith to replace any ineffective, unenforceable or illegal provision with an effective replacement as soon as is practical.

IN WITNESS WHEREOF, LICENSOR and COMPANY have each executed this Fourth Amendment through an authorized officer as of the date first written above.

EMORY UNIVERSITY

By: /s/ Todd Sherer

Its: Asst. V.P. & Director OTT

Date: 4-20-04

GILEAD SCIENCES, INC.

By: /s/ John F. Milligan

Its: Executive VP and CFO

Date: April 19, 2004

Exhibit C

Global Access Program Countries

Algeria	Kenya	Togo
Angola	Lesotho	Tunisia
Benin	Liberia	Uganda
Botswana	Libya	Zambia
Burkina Faso	Madagascar	Zimbabwe
Burundi	Malawi	
Cameroon	Mali	
Cape Verde	Mauritania	Afghanistan
Central African Republic	Mauritius	The Bahamas
Chad	Morocco	Bangladesh
Comoros	Mozambique	Bhutan
Congo-Brazzaville	Namibia	Cambodia
Cote d'Ivoire	Niger	Guyana
Democratic Republic of Congo	Nigeria	Haiti
Djibouti	Rwanda	Kiribati
Egypt	Sao Tome & Principe	Laos
Equatorial Guinea	Senegal	Maldives
Eritrea	Seychelles	Myanmar
Ethiopia	Sierra Leone	Nepal
Gabon	Somalia	Samoa
Gambia	South Africa	Solomon Islands
Ghana	Sudan	Tuvalu
Guinea	Swaziland	Vanuatu
Guinea Bissau	Tanzania	Yeman

Exhibit 21.1

SUBSIDIARIES OF GILEAD SCIENCES, INC.

Name of Subsidiary	Country of Incorporation
Avid Corporation	United States
Bristol-Myers Squibb & Gilead Sciences, L.L.C.	United States
Gilead Biopharmaceutics Ireland Corporation	Ireland
Gilead Holdings, L.L.C.	United States
Gilead Sciences Holdings, L.L.C.	United States
Gilead Sciences GmbH	Germany
Gilead Sciences SARL	France
Gilead Sciences, S.r.l.	Italy
Gilead Sciences, S.L.	Spain
Gilead Sciences, Lda.	Portugal
Gilead Sciences Limited	Ireland
Gilead Sciences Ltd.	United Kingdom
Gilead Sciences International, Ltd.	United Kingdom
Gilead Sciences Pty Limited	Australia
Gilead Sciences (NZ)	New Zealand
Gilead Sciences, B.V.	Netherlands
Gilead Sciences Canada, Inc.	Canada
Gilead Sciences Hellas EPE	Greece
Gilead Sciences Luxembourg S.a.r.l.	Luxembourg
Gilead Vintage Park, L.L.C.	United States
Leaf & Shield Insurance Limited	Bermuda

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on (Form S-8 Nos. 333-08085, 333-08083, 333-47520, 333-58893, 333-64628, 333-84713, 333-84719, 333-102911, 333-102912 and 333-117480) pertaining to the 1991 Stock Option Plan, Employee Stock Purchase Plan, the 1995 Non-Employee Directors' Stock Option Plan, the 2004 Equity Incentive Plan of Gilead Sciences, Inc., the NeXstar Pharmaceuticals, Inc. 1993 Incentive Stock Plan, the NeXstar Pharmaceuticals, Inc. 1995 Director Option Plan, the Vestar, Inc. 1988 Stock Option Plan, the Triangle Pharmaceuticals, Inc. 1996 Stock Incentive Plan, and the Option Agreement, dated August 5, 2002, between Triangle Pharmaceuticals, Inc. and Daniel G. Welch, and the Registration Statements on (Form S-3 Nos. 333-103871 and 333-111451) of Gilead Sciences, Inc. and in the related Prospectuses of our reports dated March 4, 2005, with respect to the consolidated financial statements and schedule of Gilead Sciences, Inc., Gilead Sciences, Inc. management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Gilead Sciences, Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2004.

/s/ ERNST & YOUNG LLP

Palo Alto, California
March 9, 2005

Exhibit 31.1

CERTIFICATIONS

I, John C. Martin, certify that:

1. I have reviewed this annual report on Form 10-K of Gilead Sciences, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;

4. The registrant's other certifying officers 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15 (f) and 15d-15(f)) for the registrant and 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 annual report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual 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;

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers 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; and

6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

/s/ John C. Martin

Date: March 14 , 2005

John C. Martin
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATIONS

I, John F. Milligan, certify that:

1. I have reviewed this annual report on Form 10-K of Gilead Sciences, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;

4. The registrant's other certifying officers 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15 (f) and 15d-15(f)) for the registrant and 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 annual report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual 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

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers 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; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

/s/ John F. Milligan

Date: March 14 , 2005

John F. Milligan
Executive Vice President and Chief Executive Officer

Exhibit 32

CERTIFICATION

Pursuant to the requirements set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. § 1350, as adopted), John C. Martin, the Chief Executive Officer of Gilead Sciences, Inc. (the Company), and John F. Milligan, the Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the period ended December 31, 2004, to which this Certification is attached as Exhibit 32 (the Annual Report), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods covered by the Annual Report.

In Witness Whereof , the undersigned have set their hands hereto as of the 14 th day of March, 2005.

Dated: March 14 , 2005

/s/ John C. Martin	/s/ John F. Milligan
John C. Martin	John F. Milligan
Chief Executive Officer	Chief Financial Officer

This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Gilead Sciences, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.