**COLLABORATION AGREEMENT**

**Featured Collaboration Agreements**

COLLABORATION AGREEMENT

 BY AND BETWEEN

 AMGEN INC.

 AND

 VIACELL, INC.

 DECEMBER 23, 2003

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 COLLABORATION AGREEMENT

 THIS COLLABORATION AGREEMENT (the "Agreement") is made effective as of

December 23, 2003 (the "Effective Date") by and between AMGEN INC., a Delaware

corporation having its principal place of business at One Amgen Center Drive,

Thousand Oaks, California 91320-1799 ("Amgen"), and VIACELL, INC., a Delaware

corporation having its principal place of business at 131 Clarendon Street,

Boston, Massachusetts 02116 ("ViaCell"). Amgen and ViaCell are sometimes

referred to herein individually as a "Party" and collectively as the "Parties".

 RECITALS

 WHEREAS, Amgen is a biopharmaceutical company with experience in the

research, development, manufacture, and commercialization of biotechnology and

pharmaceutical products for the treatment of human diseases;

 WHEREAS, ViaCell is a development stage cellular medicine company that has

expertise and technology relating to the use of stem cells in the production of

cell therapy products;

 WHEREAS, Amgen has developed certain technology and know-how that relates

to human proteins known as SCF and Flt3-L, which may be useful in the production

of ViaCell's cell therapy products;

 WHEREAS, ViaCell has technology, know-how, experience and expertise in the

research and development of ex vivo cell culture and cell therapy products that

may be improved or made possible by the use of SCF and Flt3-L;

 WHEREAS, ViaCell now wishes to obtain supplies of and a license under

Amgen's intellectual property rights in SCF and Flt3-L for use in ViaCell's

research and development activities relating to cell therapy products and

services;

 WHEREAS, the parties may wish to collaborate in the future with respect to

late stage clinical trials and commercialization of ViaCell's cell therapy

products on the terms and conditions set forth herein;

 WHEREAS, concurrently with the execution of this Agreement the Parties are

entering into a Securities Purchase Agreement whereby Amgen is making an equity

investment in ViaCell;

 NOW THEREFORE, based on the foregoing premises and the mutual covenants

and obligations set forth below, the Parties agree as follows:

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treatment request. An unredacted version of this exhibit has been filed with the

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 ARTICLE 1

 DEFINITIONS

 Capitalized terms used but not otherwise defined in this Agreement

(including in Exhibit B attached hereto) have the meanings set forth below:

 1.1 "AFFILIATE" shall mean, except as provided below, an individual, a

partnership, a joint venture, a corporation, a trust, an estate, an

unincorporated organization, a government or any department or agency thereof,

or any other entity or any combination of the aforementioned entities that,

directly or indirectly through one or more intermediaries, controls, is

controlled by or is under common control with a Party. For purposes of this

definition, "control" shall mean the possession, direct or indirect, of the

power to cause the direction of the management and policies of a Party, whether

through ownership of more than fifty percent (50%) of the voting securities of

such Party, by contract or otherwise.

 1.2 "AMGEN KNOW-HOW" shall mean all Information and Material Controlled by

Amgen on or following the Effective Date necessary to Develop, manufacture or

Commercialize Cell Therapy Products, Collaboration Products or Unoptioned Cell

Therapy Products, including but not limited to the following information: (1)

information disclosed in an IND for SCF and/or Flt3-L as of the Effective Date;

(2) information disclosed as of the Effective Date in any IND supplements for

SCF and/or Flt3-L; (3) all Amgen-sponsored collaborator data and results

(subject to any contractual confidentiality obligations of Amgen to Third

Parties regarding such results) that Amgen elects to and does provide to

ViaCell; (4) any regulatory data that Amgen elects to and does provide to

ViaCell; (5) sequence information or other technical information and trade

secrets relating to any Amgen Materials and information regarding their

structure, function and activity that Amgen elects to and does provide to

ViaCell; and (6) such other information that Amgen elects to and does disclose

to ViaCell, in each case that Amgen expressly designates in writing as

"confidential" or "proprietary" or that it otherwise designates as Amgen

Know-How under this Agreement; provided however, that Amgen Know-How shall

exclude Joint Know-How.

 1.3 "AMGEN PATENT RIGHTS" shall mean Amgen's rights in those Patent Rights

Controlled by Amgen on or following the Effective Date necessary to make or use

each Contributed Product including without limitation those patents and patent

applications listed in Exhibit A.

 1.4 "AMGEN TECHNOLOGY" shall mean all Amgen Patent Rights and Amgen

Know-How.

 1.5 "AMGEN TRADEMARKS" shall mean any and all corporate names, service

marks, logos or trademarks and trademark applications (whether or not

registered) together with all good will associated therewith, and any renewals,

extensions or modifications thereto either filed or used by Amgen.

 1.6 "CALENDAR QUARTER" shall mean the respective periods of three (3)

consecutive calendar months ending on either March 31, June 30, September 30, or

December 31 for so long as this Agreement is in effect.

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 1.7 "CALENDAR YEAR" shall mean each successive period of twelve (12)

months commencing on January 1 and ending on December 31.

 1.8 "CELL THERAPY PRODUCT(S)" shall mean any treatment, whether a product

or a service, that utilizes cells or tissues that are manipulated and/or

expanded ex vivo, prior to use as a therapeutic agent to treat any injury,

disease or other condition, and which includes or is produced using a

Contributed Product, including without limitation, CB001, prior to the earlier

of the exercise of the Option or the expiration of the Option Period with

respect to such treatment. For the avoidance of doubt, once Amgen exercises its

Option with respect to a Cell Therapy Product, such Cell Therapy Product shall

be deemed a Collaboration Product and shall cease to be considered a Cell

Therapy Product. For the avoidance of doubt, once the Option Period expires

with respect to a Cell Therapy Product for an indication such Cell Therapy

Product for that indication shall be deemed an Unoptioned Cell Therapy Product

and shall cease to be considered a Cell Therapy Product.

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 1.9 "CHANGE OF CONTROL" shall mean that ViaCell entered into a transaction

resulting in a transfer of [\*\*] or more of the outstanding shares of ViaCell to

a Covered Entity.

 1.10 "CLINICAL TRIAL" shall mean any study to evaluate the safety and/or

the efficacy of a Cell Therapy Product or a Collaboration Product in humans,

including, without limitation a phase 1, phase 2, phase 3, phase 4 or other

clinical trial performed by or on behalf of either party.

 1.11 "CMC" shall mean the Chemistry Manufacturing Control section of a

Regulatory Filing.

 1.12 "COLLABORATION PRODUCT(S)" shall mean any Cell Therapy Product that

is developed or manufactured using a Contributed Product or any Derivative and

with respect to which Amgen exercised its Option.

 1.13 "COMMERCIAL EXPENDITURES" shall have the meaning set forth in Exhibit

B.

 1.14 "COMMERCIAL PLAN" shall mean the comprehensive plan and overall

strategy, and any updates thereto, for the Commercialization of Collaboration

Products (in accordance with customary standards for a product of comparable

market potential) including, without limitation, regulatory activities after the

Transition Date, Promotion, Detailing and other pre-launch and post-launch

marketing and sales activities. The Commercial Plan shall include, but not be

limited to, a reasonably detailed description of the schedule of work

activities, responsibility for the work activities and an associated budget.

 1.15 "COMMERCIALIZE" OR "COMMERCIALIZATION" shall mean all activities

(including the preparation and filing of Drug Approval Applications) relating to

the Promotion, Detailing, and other pre-launch and post-launch marketing and

sale activities of a Collaboration Product and shall include, without

limitation, Post-Approval Clinical Studies and regulatory affairs related to the

foregoing.

 1.16 "COMMERCIALLY REASONABLE EFFORTS" shall mean the level of efforts and

resources required to develop, manufacture or commercialize a Collaboration

Product in a sustained manner consistent with the efforts a similarly situated

biopharmaceutical company would typically devote to a product of similar market

potential, profit potential or strategic value resulting from its own research

efforts, based on conditions then prevailing. Commercially Reasonable Efforts

shall be determined on a country-by-country (each country including its

territories) basis for a particular Collaboration Product, and it is anticipated

that the level of effort will change over time reflecting changes in the status

of the Collaboration Product and the country (including its territories)

involved.

 1.17 "CONFIDENTIAL INFORMATION" shall mean, subject to the exceptions set

forth in the following sentence, any all Information received by either Party

("receiving Party") from the other Party ("disclosing Party") pursuant to this

Agreement that the disclosing Party has either marked as confidential or

proprietary, or has identified in writing as confidential or proprietary within

[\*\*] after disclosure to the receiving Party in a non-written form.

"Confidential Information" shall not include any Information which:

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 (A) is publicly disclosed by the disclosing Party, either before or

after it becomes known to the receiving Party;

 (B) was known to the receiving Party, without obligation to keep it

confidential, prior to when it was received from the disclosing Party;

 (C) is subsequently disclosed to the receiving Party by a Third

Party lawfully in possession thereof without obligation to keep it confidential;

 (D) has been publicly disclosed other than by the disclosing Party

and without breach of an obligation of confidentiality with respect thereto; or

 (E) has been independently developed by the receiving Party without

the aid, application, reference to or use of Confidential Information, as

demonstrated by competent written proof.

 1.18 "CONTRIBUTED PRODUCT" shall mean (a) SCF, (b) Flt3-L and (c) any

cytokine or other Amgen Know-How or Material that Amgen Controls and which Amgen

has, in its sole discretion chosen to make available to ViaCell under this

Agreement, and which ViaCell has expressly accepted for use in connection with

Unoptioned Cell Therapy Products, Cell Therapy Products and/or Collaboration

Products under this Agreement, as listed on Exhibit D, as updated from time to

time by mutual agreement of the Parties.

 1.19 "CONTROL" OR "CONTROLLED" shall mean possession of the ability to

grant a license or sublicense as provided for herein under valid and subsisting

intellectual property rights without violating the terms of any agreement or

other arrangement with any Third Party or applicable law.

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 1.20 "COVERED ENTITY" shall mean a company that (i) Amgen can reasonably

demonstrate is or was involved, within the previous [\*\*] including, without

limitation, those listed on Exhibit C, (ii) has a Market Capitalization of less

than $[\*\*] or (iii) has a Market Capitalization of more than $[\*\*] and [\*\*]. For

purposes of this definition, "Market Capitalization" of a company shall mean (A)

if the company's common equity is publicly traded, the value of the outstanding

common equity based on (1) if the common equity is listed or admitted to trade

on a national securities exchange, the [\*\*] closing price of the company's

common equity on the principal national securities exchange on which it is so

listed or admitted to trade [\*\*], as published in the Wall Street Journal; (2)

if the common equity is not listed or admitted to trade on a national securities

exchange, the average of the closing price for the company's common equity [\*\*],

as furnished by the National Association of Securities Dealers, Inc. ("NASD")

through the NASDAQ National Market Reporting System or a similar organization if

the NASD is no longer reporting such information; or (3) if the company's common

equity is not listed or admitted to trade on a national securities exchange and

is not reported on the National Market Reporting System, [\*\*], as furnished by

the NASD or a similar organization; or (B) if the company's common equity is not

publicly traded and the NASD or a similar organization does not furnish the mean

between the bid and asked prices for the company's common equity, the fair

market value of the company's outstanding common equity [\*\*].

 1.21 "DERIVATIVE" shall mean any modification of a Contributed Product,

wherein the modification is covered by one or more Patent Rights Controlled by

or licensed to Amgen.

 1.22 "DETAIL" OR "DETAILING" shall mean, with respect to a Collaboration

Product, an interactive face-to-face visit by a Party's sales representative

with a physician, designated by the Commercial Lead as a member of the target

call audience, at his or her office, at hospitals or at other locations

(excluding exhibits, displays and other forms of communication not involving

face-to-face contact by such sales representative), during which indicated uses,

safety, effectiveness, contraindications, side effects, warnings and/or other

relevant characteristics of a Collaboration Product as approved by a Regulatory

Authority are described in a fair and balanced manner consistent with the FD&C

Act (or equivalent laws in the Territory), as applicable, including, but not

limited to, the regulations at 21 CFR Part 202 and using, as necessary or

desirable, the Product Labeling (as defined herein) or the Promotional Materials

(as defined herein), in an effort to increase physician prescribing preferences

of such Collaboration Product for its approved indicated uses.

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 1.23 "DEVELOPMENT" OR "DEVELOP" shall mean all clinical development

activities undertaken to obtain Regulatory Approval for a Cell Therapy Product

or Collaboration Product in an indication in the Territory. For the avoidance of

doubt, these activities shall include clinical studies and clinical drug

development activities, including among other things: test method development

and stability testing, toxicology, formulation, process development, statistical

analysis and report writing, product approval and registration, and regulatory

affairs related to the foregoing. When used as a verb, "Develop" means to engage

in Development.

 1.24 "DEVELOPMENT PLAN" shall mean the comprehensive plan, overall

strategy and timelines, and any updates thereto, for the Development of Cell

Therapy Products and Collaboration Products (in accordance with customary

standards for a product of comparable market potential) including, without

limitation, the research, preclinical research, clinical studies, development/

manufacturing, clinical and regulatory activities required to obtain Regulatory

Approval(s) in the Territory. The Development Plan shall include, but not be

limited to, a reasonably detailed description of the schedule of work

activities, responsibility for the work activities and an associated budget.

 1.25 "DIRECT DEVELOPMENT COST" shall mean (i) actual Third Party charges

and fees paid by ViaCell for the performance of clinical development of Cell

Therapy Products, which become Collaboration Products upon Amgen exercising its

Option, (ii) ViaCell's labor cost directly related to clinical development of

Cell Therapy Products, which become Collaboration Products upon Amgen exercising

its Option, and (iii) ViaCell's labor cost and actual Third Party charges and

fees paid by ViaCell for the manufacture of Cell Therapy Products, which become

Collaboration Products upon Amgen exercising its Option [\*\*]. All ViaCell labor

costs included under "Direct Development Cost" shall be charged at [\*\*].

 1.26 "DOLLAR" OR "$" shall mean a United States dollar.

 1.27 "DRUG APPROVAL APPLICATION" shall mean an application for Regulatory

Approval required before commercial sale or use of a Collaboration Product as a

drug or to treat a particular indication in a regulatory jurisdiction, including

without limitation: (a) (i) a Biologics License Application (BLA) pursuant to 21

C.F.R. 601.2, submitted to the FDA or any successor application or procedure and

(ii) any counterpart of a U.S. BLA in another country in the Territory; and (b)

all supplements and amendments, including supplemental Biologics License

Applications (and any foreign counterparts) that may be filed (e.g., to expand

the label) with respect to the foregoing.

 1.28 "FDA" shall mean the United States Food and Drug Administration, or

any successor thereto.

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 1.29 "FIRST COMMERCIAL SALE" shall mean the initial transfer by a Party of

a Collaboration Product to a Third Party for any indication in exchange for cash

or some other consideration to which value can be assigned, following Regulatory

Approval to market such Collaboration Product.

 1.30 "FLT3-L" shall mean shall mean Amgen's Flt3 Ligand, a hematopoietic

growth factor, having the amino acid sequence which is set forth in Exhibit E.

 1.31 "FORCE MAJEURE" shall mean any occurrence beyond the reasonable

control of a Party that prevents or substantially interferes with the

performance by the Party of any of its obligations hereunder, if such occurs by

reason of any act of God, flood, fire, explosion, earthquake, breakdown of

plant, shortage of critical equipment, loss or unavailability of manufacturing

facilities or material, strike, lockout, labor dispute, casualty or accident, or

war, revolution, civil commotion, acts of public enemies, blockage or embargo,

or any injunction, law, order, proclamation, regulation, ordinance, demand or

requirement of any government or of any subdivision, authority or representative

of any such government, inability to procure or use materials, labor, equipment,

transportation or energy sufficient to meet manufacturing needs without the

necessity of allocation, or any other cause whatsoever, whether similar or

dissimilar to those above enumerated, beyond the reasonable control of such

Party, if and only if the Party affected shall have used reasonable efforts to

avoid such occurrence and to remedy it promptly if it shall have occurred.

 1.32 "GAAP" shall mean United States generally accepted accounting

principles.

 1.33 "IND" shall mean an Investigational New Drug application.

 1.34 "INFORMATION" shall mean all tangible and intangible techniques,

technology, practices, trade secrets, inventions (whether patentable or not),

methods, knowledge, know-how, conclusions, skill, experience, test data and

results (including pharmacological, toxicological and clinical test data and

results), analytical and quality control data, results or descriptions, software

and algorithms.

 1.35 "JOINT KNOW-HOW" shall mean Information and Materials characterized,

conceived, developed, derived, generated or identified jointly by employees of

or consultants to ViaCell and employees of or consultants to Amgen from the

Effective Date through the Term in the course of performing obligations or

exercising rights under this Agreement.

 1.36 "JOINT PATENT RIGHTS" shall mean all Patent Rights that claim or

disclose Joint Know-How.

 1.37 "LOSSES" shall mean liabilities, costs, fees, expenses and/or losses,

including without limitation reasonable legal costs, expenses and attorneys'

fees for outside counsel.

 1.38 "MAJOR MARKET COUNTRY" shall mean the United States, United Kingdom,

Italy, Germany, France or Japan.

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treatment request. An unredacted version of this exhibit has been filed with the

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 1.39 "MANUFACTURING PLAN" shall mean the comprehensive plan, overall

strategy and timelines, and any updates thereto, for the manufacture of Cell

Therapy Products and Collaboration Products. The Manufacturing Plan shall

include, but not be limited to, a reasonably detailed description of the

schedule of work activities, responsibility for the work activities and an

associated budget.

 1.40 "MANUFACTURING TRANSITION" shall mean the process and change in the

rights and responsibilities of the Parties described in Section 7.2(g) of this

Agreement.

 1.41 "MATERIALS" shall mean biological materials including, but not

limited to, Contributed Products, screens, animal models, cell lines, cells,

nucleic acids, receptors, cytokines, proteins, reagents and other molecules.

 1.42 "NET SALES" shall mean all revenues recognized in accordance with

GAAP from the sale or other disposition of Collaboration Products by Amgen,

ViaCell or their respective Affiliates to a Third Party after deducting returns

and allowances (actually paid or allowed) including, [\*\*]. Amounts received by a

Party or its Affiliates for the sale of Collaboration Products to such Party or

its Affiliates for resale shall not be included in the computation of Net Sales

hereunder.

 1.43 "OPERATING PROFIT OR LOSS" shall mean, for any period, the total Net

Sales of Collaboration Products less the sum of Allowed Expenditures.

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 1.44 "PATENT RIGHTS" shall mean (i) a pending application for a patent,

including without limitation any provisional, converted provisional, continued

prosecution application, continuation, divisional or continuation-in-part

thereof; or (ii) an issued, unexpired patent (with the term "patent" being

deemed to encompass, without limitation, an inventor's certificate) which has

not been held invalid or unenforceable by a court of competent jurisdiction from

which no appeal can be taken or has been taken within the required time period,

including without limitation any substitution, extension, registration,

confirmation, reissue, re-examination, renewal or any like filing thereof.

 1.45 "PIVOTAL TRIAL(S)" shall mean those clinical trials on sufficient

numbers of patients that, if the defined end-points are met, are designed (and

agreed to by the FDA, or other Regulatory Authorities in the Territory) based

upon existing data in the same patient population as of the start of the trial

to definitively establish that a drug is safe and efficacious for its intended

use, and to define warnings, precautions and adverse reactions that are

associated with the drug in the dosage range to be prescribed, and which provide

pivotal data supporting Regulatory Approval of such drug or label expansion of

such drug and that satisfy the requirements of 21 CFR 321.21(c), or its

successor regulation, or an equivalent foreign clinical trial.

 1.46 "POST-APPROVAL CLINICAL STUDIES" shall mean those clinical studies,

after Regulatory Approval of a Collaboration Product, approved by the JSC

including, but not limited to, Post Marketing Approval Studies, pharmacoeconomic

studies, pharmacoepidemiology studies, and investigator sponsored clinical

studies and, to the extent requested or modified from time to time, safety

surveillance studies.

 1.47 "POST MARKETING APPROVAL STUDIES" shall mean those clinical trials,

including safety surveillance studies, conducted under an IND which are agreed

upon by the Commercial Lead and a Regulatory Authority as a condition of

approval or maintenance of approval of a Drug Approval Application for a

Collaboration Product, as the case may be, other than patient registries of

other than a passive, non-interventional nature.

 1.48 "PROCESS DEVELOPMENT/MANUFACTURING PLAN" shall mean the comprehensive

plan and overall strategy, and any updates thereto, for process

development/manufacturing scale-up, manufacture, formulation, filling and/or

shipping of selected Collaboration Products (in accordance with customary

standards for a product of comparable market potential). The Process

Development/Manufacturing Plan shall include, but not be limited to, (i) a

reasonably detailed description of the schedule of work activities,

responsibility for the work activities and an associated budget of Collaboration

Products prior to completion of any Pivotal Trial therewith and (ii) a

reasonably detailed description of the schedule of work activities,

responsibility for the work activities and an associated budget of Collaboration

Products upon or after completion of any Pivotal Trial therewith.

 1.49 "PRODUCT LABELING" shall mean (a) the Regulatory Authority-approved

full prescribing information of a Collaboration Product, including any required

patient information

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and (b) all labels and other written, printed or graphic matter upon any

container, wrapper or any package insert or outsert utilized with or for a

Collaboration Product.

 1.50 "PRODUCT TRADEMARK" shall mean any trademarks and trade names (and

trademark applications (whether or not registered) together with all goodwill

associated therewith, and any renewals, extensions or modifications thereto in

the Territory), trade dress and packaging, in each case, which are applied to or

used with Collaboration Products or any Promotional Materials. "Product

Trademark" shall not include the marks AMGEN or VIACELL.

 1.51 "PROGRAM PLAN" shall mean the comprehensive plan and overall

strategy, and any updates thereto, for the Development and manufacture of Cell

Therapy Products and the Commercialization of Collaboration Products. The

Program Plan shall be comprised of the Development Plan, Manufacturing Plan,

Regulatory Plan, Commercial Plan and other allowable activities (and Other

Allowed Expenditures) and an associated budget for the foregoing.

 1.52 "PROMOTE" OR "PROMOTION" OR "PROMOTING" OR "PROMOTIONAL" shall mean,

with respect to a Collaboration Product, those activities and obligations other

than Detailing undertaken by a Party to encourage sales of such Collaboration

Product including, but not limited to, journal advertising, direct mail

programs, direct-to-consumer advertising, education, convention exhibits, and

other forms of advertising, promotion and any other communication specified in

any Commercial Plan.

 1.53 "PROMOTIONAL MATERIALS" shall mean all sales representative training

materials and all written, printed, graphic, electronic, audio or video matter

including, but not limited to, journal advertisements, sales visual aids, direct

mail, direct-to-consumer advertising, Internet postings, broadcast

advertisements, and sales reminder aids (e.g., scratch pads, pens and other such

items) intended for use or used by a Party in connection with any Promotion (as

defined herein) or Detailing of a Collaboration Product, except Product

Labeling.

 1.54 "RECALL" OR "RECALLING" shall mean an event, incident or circumstance

which may result in the need for a "recall" or "market withdrawal" (as such

terms are defined in U.S. regulations in 21 CFR 7.3 or other similar national,

state or local law or regulations) or field alert or field correction of a

Collaboration Product or any lots thereof.

 1.55 "REGULATORY APPROVAL" shall mean any approvals (including

supplements, amendments, pre- and post-approvals and price approvals), licenses,

registrations or authorizations (including designations of a Collaboration

Product as an "Orphan Product" under the Orphan Drug Act), howsoever called, of

any Regulatory Authority, which are necessary for the distribution, importation,

exportation, manufacture, production, use, storage, transport or clinical

testing and/or sale of a Cell Therapy Product or Collaboration Product in a

regulatory jurisdiction. Regulatory Approval shall not include any site license

for an Amgen manufacturing facility.

 1.56 "REGULATORY AUTHORITY" shall mean the FDA or any counterpart of the

FDA outside the United States, or other national, supra-national, regional,

state or local regulatory agency, department, bureau, commission, council or

other governmental entity with authority

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over the distribution, importation, exportation, manufacture, production, use,

storage, transport or clinical testing and/or sale of a Cell Therapy Product or

Collaboration Product.

 1.57 "REGULATORY FILINGS" shall mean, collectively, INDs, BLAs,

establishment license applications (ELAs) and drug master files (DMFs),

applications for designation of a Collaboration Product as an "Orphan

Product(s)" under the Orphan Drug Act or any other similar filings (including

any foreign equivalents and further including any related correspondence and

discussions), and all data contained therein, as may be required by the FDA or

equivalent foreign Regulatory Authorities for the Development, manufacture or

Commercialization of a Cell Therapy Product or Collaboration Product.

 1.58 "REGULATORY PLAN" shall mean the comprehensive plan or plans and

overall strategy, and any updates thereto, for preparing and filing any and all

Regulatory Filings regarding Cell Therapy Products or Collaboration Products (in

accordance with customary standards for a product of comparable market

potential) and for communications with Regulatory Authorities, including all

interactions with respect to such Regulatory Filings. The Regulatory Plan shall

include, but not be limited to, a reasonably detailed description of the

schedule of the work activities, responsibility for the work activities and an

associated budget.

 1.59 "REPRESENTATIVES" of a party shall mean all directors, officers,

employees, agents and advisors (including, without limitation, attorneys,

accountants, investment bankers and financial advisors) of such party and the

Affiliates of such party.

 1.60 "SCF" shall mean Amgen's Stem Cell Factor, an early-acting

hematopoietic growth factor, having the amino acid sequence which is set forth

in Exhibit F plus or minus a methionine at position -1.

 1.61 "TERRITORY" shall mean the world.

 1.62 "THIRD PARTY" shall mean any individual, partnership, joint venture,

corporation, trust, estate, unincorporated organization, government or any

department or agency thereof, or any other entity other than Amgen or ViaCell or

an Affiliate of either of them.

 1.63 "TRANSITION DATE" shall mean, with respect to a Collaboration

Product, the date that is [\*\*] regarding such Collaboration Product.

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 1.64 "UNOPTIONED CELL THERAPY PRODUCT(S)" shall mean any Cell Therapy

Product for an indication for which the Option Period has expired.

 1.65 "VIACELL KNOW-HOW" shall mean all Information and Materials

Controlled by ViaCell on or following the Effective Date necessary to Develop,

manufacture or Commercialize Collaboration Products. "ViaCell Know-How" shall

not include Joint Know-How.

 1.66 "VIACELL PATENT RIGHTS" shall mean ViaCell's rights on or following

the Effective Date in all Patent Rights in force throughout the Territory having

at least one valid and enforceable claim covering the composition, manufacture

or use of Cell Therapy Products and/or Collaboration Products, including without

limitation those patents and patent applications listed in Exhibit G. "ViaCell

Patent Rights" shall not include Joint Patent Rights.

 1.67 "VIACELL TECHNOLOGY" shall mean all ViaCell Patent Rights and ViaCell

Know-How.

 1.68 "VIACELL TRADEMARKS" shall mean any and all corporate names, service

marks, logos or trademarks and trademark applications (whether or not

registered) together with all good will associated therewith, and any renewals,

extensions or modifications thereto either filed or used by ViaCell and listed

on Exhibit H, as updated from time to time by ViaCell.

 ARTICLE 2

 COLLABORATION ACTIVITIES AND GOVERNANCE

 2.1 DEVELOPMENT PRIOR TO OPTION EXERCISE. ViaCell shall engage in research

and development activities with the goal of developing Cell Therapy Products.

Such research and development may, consistent with the terms of the licenses set

forth in this Agreement, include the use of the Contributed Products.

 2.2 JOINT STEERING COMMITTEE. As soon as practicable following the

Effective Date, the Parties shall establish a Joint Steering Committee (the

"JSC") comprised of [\*\*] officers or managers from each of ViaCell and Amgen.

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 2.3 JSC RESPONSIBILITIES. The JSC shall be responsible for overseeing and

managing the collaboration with respect to Cell Therapy Products and

Collaboration Products, including, without limitation the following functions:

 (A) The JSC shall meet at least twice per Calendar Year. Such

meetings shall alternate between Amgen and ViaCell locations and be held at such

times as are agreed upon by the JSC. At least one JSC meeting per year shall be

conducted in person, whereas other JSC meetings may be held in person or by

video conference or teleconference. The first meeting shall be held at Amgen's

facilities within [\*\*] of the Effective Date, and the agenda for such meeting

shall include a review of a program plan for 2004 including a budget for Direct

Development Costs for CB001 and any other Cell Therapy Products. If a Party's

representative is unable to attend a meeting, such Party may designate an

alternate representative to attend such meeting. In addition, each Party may, at

its discretion (and with the consent of the other Party, not to be unreasonably

withheld), invite additional employees, consultants or scientific advisors to

attend any JSC meetings.

 (B) The JSC shall review and discuss the progress of ViaCell's

Development and manufacturing of Cell Therapy Products and, if applicable,

Amgen's Development and Commercialization and ViaCell's manufacturing of

Collaboration Products, including review of plans, budgets, clinical trial

designs, data, results and other information in appropriate detail to enable the

JSC members to meaningfully monitor the progress of the Development,

manufacturing and Commercialization efforts of the Parties and to provide advice

and feedback relating thereto.

 (C) The JSC shall consider the applicability and usefulness of any

Materials that a Third Party or Amgen may (in its sole discretion) choose to

make available to ViaCell for use in producing or using the Cell Therapy

Products and/or the Collaboration Products.

 (D) Each year at the first JSC Meeting after the beginning of

ViaCell's fiscal year the JSC shall review an annual budget for projected Direct

Development Costs for each Cell Therapy Product for the following year prepared

by ViaCell in conjunction with ViaCell's annual budget process. At the first JSC

meeting after the end of ViaCell's fiscal year, the JSC shall review and

reconcile the actual Direct Development Costs for each Cell Therapy Product to

the budget previously reviewed. Upon approval by the JSC of the budget and the

reconciliation, such approvals shall be noted in the minutes of the JSC meeting.

[\*\*].

 (E) For Collaboration Products, each Party shall submit to the JSC

for review prior to the end of [\*\*] its [\*\*] plans and budgets in draft form

covering activities for which it is responsible. [\*\*].

 (F) The JSC shall perform such other functions as appropriate to

further the purposes of the collaboration pursuant to the terms and conditions

of this Agreement.

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 The JSC shall not have the authority to require Amgen or ViaCell to

undertake or modify any activities for which such Party is responsible under

this Agreement. Further, notwithstanding the above responsibilities of the JSC,

nothing in this Section 2.3 shall erode or detract from each Party's rights and

responsibilities for Developing, manufacturing and Commercializing Cell Therapy

Products and Collaboration Products pursuant to the Program Plan and as

described in this Agreement.

 2.4 JSC MEETING PREPARATION.

 (A) At least [\*\*] prior to each regularly scheduled JSC meeting,

ViaCell shall provide to Amgen a report summarizing the progress of ViaCell's

research and Development efforts relating to Cell Therapy Products and its

manufacturing efforts related to Cell Therapy or Collaboration Products. After

each Transition Date and for so long as Amgen has primary responsibility for the

Development and Commercialization of a Collaboration Product(s), Amgen shall

provide to ViaCell a report summarizing the progress of Amgen's Development and

Commercialization efforts relating to Collaboration Products at least [\*\*] prior

to each regularly scheduled JSC meeting.

 (B) ViaCell may provide to Amgen, and Amgen may consider, a request

for information relating to [\*\*] Controlled by Amgen, which ViaCell believes may

have potential utility in Cell Therapy Products.

 (C) At least once per Calendar Year, Amgen shall provide to ViaCell

a summary report [\*\*] and which Amgen believes may have potential utility in

Cell Therapy Products, and which Amgen (in its sole discretion) desires to make

available to ViaCell for use in the research and development of Cell Therapy

Products (if any). Amgen may elect to include in its summary report information

[\*\*] that was the subject of a request for information under Section 2.4(b).

 (D) All reports, requests for information and other material

provided pursuant to Section 2.4 of this Agreement shall be provided in writing

to each member of the JSC.

 2.5 DECISION MAKING; ADMINISTRATIVE MATTERS.

 (A) Decision Making. All decisions of the JSC shall be made by the

[\*\*] of ViaCell and Amgen, with the representatives of each Party who are

members of the JSC collectively having one vote in any matter requiring the

approval of the JSC.

 (B) Dispute Resolution. If the JSC is unable to reach [\*\*] agreement

on any issue within a period of [\*\*] after receiving written notification from a

Party of a dispute regarding such issue under this Agreement, then the final

decision-making authority for any such matter shall be determined, depending

upon the subject matter of the unresolved issue, as follows:

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 (I) Development decisions: Subject to the obligations set forth in

Section 5.7(a) to meet and cooperate with respect to Severe Adverse Events,

ViaCell shall have final decision-making authority with respect to Development

activities relating to all Cell Therapy Products, after reasonably considering

in good faith any concerns raised or comments promptly provided by Amgen.

Subject to the obligations set forth in Section 5.7(a) to meet and cooperate

with respect to Severe Adverse Events, Amgen shall have final decision-making

authority with respect to Development activities relating to all Collaboration

Products, after reasonably considering in good faith any concerns raised or

comments promptly provided by ViaCell.

 (II) Manufacturing decisions: Except for decisions relating to the

manufacture of Contributed Products, ViaCell shall have final decision-making

authority with respect to process development and manufacturing activities,

after reasonably considering in good faith any concerns raised or comments

promptly provided by Amgen. Subject to the provisions of Section 7.3 of this

Agreement, neither ViaCell nor the JSC shall have any authority relating to the

manufacture of Contributed Products, which shall be solely within the authority

and discretion of Amgen. The provisions of this Section 2.5(b)(ii) shall be

subject to Section 7.2(g), and upon and after a Manufacturing Transition, Amgen

shall have final decision-making authority with respect to process development

and manufacturing activities.

 (III) Regulatory decisions: ViaCell shall have final decision-making

authority with respect to all activities relating to obtaining Regulatory

Approvals for all Cell Therapy Products, after reasonably considering in good

faith any concerns raised or comments promptly provided by Amgen. Amgen shall

have final decision-making authority with respect to all activities relating to

obtaining Regulatory Approvals for all Collaboration Products, after reasonably

considering in good faith any concerns raised or comments promptly provided by

ViaCell.

 (IV) Commercialization decisions: Amgen shall have final

decision-making authority with respect to Commercialization activities relating

to all Collaboration Products, after reasonably considering in good faith any

concerns raised or comments promptly provided by ViaCell. For the avoidance of

doubt, neither Party shall have any rights to commercialize Cell Therapy

Products and ViaCell reserves for itself all rights to commercialize all

Unoptioned Cell Therapy Products.

 (V) All other Decisions: The Parties shall attempt to resolve

disputes arising under, or relating to, this Agreement that concern matters not

listed in (i) - (iv) above in accordance with the provisions of Article 17,

below.

For the avoidance of doubt, control of final decision-making authority for any

matter as set forth in Sections 2.5(b)(i)-(iv) shall not relieve the Party with

such final decision-making authority from any of its representations, warranties

and/or covenants as set forth in Article 14 nor shall it enable such Party to

unilaterally modify or amend the terms of this Agreement.

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 (C) Administrative Matters. The JSC shall establish its own

procedural rules for its operation, consistent with the terms of this Section

2.5. A chairperson for the JSC shall be appointed from among its members. The

chairperson shall be appointed on an annual basis and will be a ViaCell

representative prior to the Transition Date of the first Collaboration Product

and an Amgen representative after the Transition Date of the first Collaboration

Product. The chairperson shall be responsible for calling meetings of the JSC

and for leading the meetings. A JSC member of the Party hosting a meeting of the

JSC shall serve as secretary of that meeting. Within [\*\*] following each

meeting, the secretary of such meeting shall prepare and distribute to all

members of the JSC the minutes of the meeting. Such minutes shall provide a

reasonably detailed description of the meeting discussions and a list of any

actions, decisions or determinations approved by the JSC. The minutes of each

JSC meeting shall be approved or disapproved, and revised as necessary, at the

next meeting. Final minutes of each meeting shall be distributed to the members

of the JSC by the chairperson.

 2.6 SCIENTIFIC ADVISORY BOARD.

 (A) During the Term, ViaCell shall arrange for at least one senior

Amgen scientist identified by Amgen, who shall initially be Dr. Glenn Begley,

Senior Director, Basic Research, Hematology (the "MSAB Nominee"), to serve as a

member of ViaCell's Medical Scientific Advisory Board. Amgen, in its sole

discretion, shall have the right to replace such MSAB Nominee at any time upon

written notice to ViaCell.

 (B) ViaCell shall retain the right at all times to exclude the MSAB

Nominee from segments of its Medical Scientific Advisory Board meetings that do

not relate to Cell Therapy Products or Collaboration Products. Amgen and the

MSAB Nominee shall retain the right at all times to recuse the MSAB Nominee from

any meeting or segments of a meeting of ViaCell's Scientific Advisory Board.

 (C) The Parties understand and acknowledge that the MSAB Nominee is

intended solely to provide ViaCell with strategic technical scientific input,

and is not intended to confer on Amgen, the MSAB Nominee or any employees,

officers or directors of Amgen any duties to ViaCell, including, without

limitation, fiduciary duties or rights. ViaCell further understands that Amgen's

employees, officers and directors owe duties solely to Amgen, its subsidiaries

and Affiliates. Any advice provided by Amgen, its employees, officers and

directors is provided with no warranties of any kind, and ViaCell shall

indemnify, defend and hold Amgen harmless for any claims that may result from

its reliance thereon.

 ARTICLE 3

 DEVELOPMENT

 3.1 VIACELL RESPONSIBILITIES.

 (A) ViaCell shall be responsible for preparing and submitting the

Development Plan section of the Program Plan with respect to Cell Therapy

Products to and for approval by the JSC, and shall update the Development Plan

on an annual basis, in time for the annual budget cycle of each of the Parties;

provided however, it is acknowledged and agreed that

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the Development Plan may need to be modified from time to time between annual

updates, based upon the results of clinical trials and other unanticipated

events. [\*\*].

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 (B) ViaCell shall have responsibility for all aspects of Developing

the Cell Therapy Products in the Territory, including making all strategic and

tactical decisions with respect thereto in accordance with the Development Plan

and establishing the methods and means by which it performs its obligations

under this Agreement (including the management of permitted subcontractors,

pursuant to Section 18.6).

 (C) ViaCell hereby covenants that it shall use Commercially

Reasonable Efforts to generate data as soon as practicable from a Phase 1

clinical trial, and, if applicable, from a Phase 2 clinical trial, all in

accordance with the Development Plan approved by the JSC.

 3.2 AMGEN RESPONSIBILITIES.

 (A) Amgen shall be responsible for preparing and submitting the

Development Plan section of the Program Plan with respect to the Collaboration

Products to and for approval by the JSC, and shall update the Development Plan

on an [\*\*] basis, [\*\*]; provided however, it is acknowledged and agreed that the

Development Plan may need to be modified from time-to-time[\*\*], based upon the

results of clinical trials and other unanticipated events. [\*\*].

 (B) Amgen shall have responsibility for all aspects of Developing

the Collaboration Products in the Territory, including making all strategic and

tactical decisions with respect thereto in accordance with the Development Plan

and establishing the methods and means by which it performs its obligations

under this Agreement (including the management of permitted subcontractors,

pursuant to Section 18.6). For the avoidance of doubt, Amgen shall use its

Commercially Reasonable Efforts in relation to creating and amending the

Development Plan in a manner that is reasonable and in exercising

decision-making with respect to the Development of the Collaboration Products.

 3.3 ADDITIONAL AMGEN ASSISTANCE. Upon the request of ViaCell, Amgen [\*\*]

to assume certain Development responsibilities in support of ViaCell's carrying

out the activities within the Development Plan. Prior to assuming any such

responsibility, Amgen shall provide to ViaCell, for approval by the JSC and

inclusion within the Development Plan, the estimated budget for carrying out any

such responsibility. Immediately upon execution of such responsibilities, Amgen

may charge its expenses associated therewith to ViaCell in the form of written

invoices to be paid within [\*\*] of receipt.

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 3.4 DEVELOPMENT OBLIGATIONS. Each Party shall be responsible for carrying

out its activities in accordance with the Development Plan. These activities

shall include, without limitation (i) identifying and carrying out all major

Development tasks to be conducted prior to submission of filings for Regulatory

Approval of a Collaboration Product for a particular indication; (ii)

identifying key Development objectives, expected associated resources, risk

factors, timelines, go/no go decision points and relevant decision criteria;

(iii) carrying out all aspects of (e.g., designing studies and protocols and

conducting), and preparing the associated Regulatory Plan for, all clinical

trials necessary to obtain Regulatory Approval for each indication pursued, as

well as establishing new dosage forms, new formulations or other enhancements of

approved Collaboration Products (but excluding Post-Approval Clinical Studies)

including, but not limited to (1) establishing/contracting with clinical sites,

investigators and contract research organizations ("CROs"), (2) enrolling

clinical study patients, (3) organizing investigator meetings, scientific

meetings, advisory panel workshops and regulatory meetings, and (4) analyzing,

summarizing and presenting clinical study results; (iv) performing any other

additional research and pre-clinical research in support of the clinical

development of Collaboration Products; (v) forecasting clinical manufacturing

production requirements; and (vi) Regulatory Authority reporting on study

design, study outcome, other communications and regulatory filings (to the

extent not covered by a Regulatory Plan).

 3.5 INFORMATION AND DATA.

 (A) ViaCell shall promptly disclose to Amgen all material scientific

or technical information relating to any Collaboration Product that it discovers

in the course of Development activities, promptly after it is learned or its

materiality is appreciated. ViaCell shall maintain a database which contains (i)

all clinical trial data accumulated from clinical trials of all Cell Therapy

Products, (ii) all safety data, and (iii) all adverse reaction information for

all Cell Therapy Products. On an annual basis, ViaCell shall provide Amgen with

written summaries of all pre-clinical and clinical data generated by or on

behalf of ViaCell with respect to Cell Therapy Products, as well as all such

pre-clinical and clinical data in an industry standard computer readable format

requested by Amgen. Amgen shall be entitled to have access, during regular

business hours and upon reasonable advance notice, to such pre-clinical and

clinical data maintained by ViaCell (including all clinical trial databases, in

an industry standard computer readable format requested by Amgen). ViaCell shall

ensure that its preclinical and clinical trials are monitored and audited in

accordance with industry standards.

 (B) Amgen shall promptly disclose to ViaCell all material scientific

or technical information relating to any Cell Therapy Product or Collaboration

Product that it discovers in the course of Development activities, promptly

after it is learned or its materiality is appreciated. Amgen shall maintain a

database which contains (i) all clinical trial data accumulated from clinical

trials of all Collaboration Products, (ii) all safety data, and (iii) all

adverse reaction information for all Collaboration Products. On an annual basis,

Amgen shall provide ViaCell with written summaries of all clinical data

generated by Amgen with respect to Collaboration Products, as well as such

clinical data in an industry standard computer readable format requested by

ViaCell. ViaCell shall be entitled to have access, during regular business hours

and upon reasonable advance notice to such clinical data maintained by Amgen

(including all clinical trial databases, in an industry standard computer

readable format requested by

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ViaCell). Amgen shall ensure that its preclinical and clinical trials are

monitored and audited in accordance with industry standards.

 3.6 AUDIT. Amgen shall have the right to conduct reasonable quality

assurance audits with respect to all facilities, clinical sites, operations and

laboratories (and any records related thereto) of ViaCell or Third Party

subcontractors, where Development activities are conducted, as is reasonably

necessary solely for the purpose of verifying ViaCell's conformance with

applicable cGMP, cGLP, cGCP and other regulatory requirements. Such audits shall

be conducted upon reasonable notice during reasonable business hours.

 ARTICLE 4

 AMGEN OPTION

 4.1 VIACELL REPORTING OBLIGATIONS. Upon completing the data collection and

analysis resulting from each Clinical Trial for any Cell Therapy Product,

ViaCell shall promptly provide to the JSC a detailed written report describing

the Clinical Trial results and sufficient related information necessary to

evaluate future development options and requirements. The JSC shall promptly

review such report to determine whether the form and substance of the report

meet standards for such reports in the pharmaceutical and biotechnology

industries, and, if applicable, suggest changes or improvements thereto.

Promptly after approval of such report by the JSC, ViaCell shall provide a copy

of the approved report to Amgen. Such report shall include a detailed written

account of the Direct Development Costs approved pursuant to Section 2.3,

incurred up to that date, itemized by product and by indication.

 4.2 OPTION GRANT. ViaCell hereby grants to Amgen, and Amgen hereby accepts

a worldwide, exclusive option to select as a Collaboration Product any Cell

Therapy Products that are researched, developed or made using any Contributed

Product (the "Option"). For the avoidance of doubt, upon the exercise of the

Option, Amgen will automatically receive (and ViaCell hereby grants to Amgen) a

worldwide, exclusive license under the ViaCell Technology sufficient to make,

have, made, use, sell, promote, import and export the Collaboration Products,

provided, however, that the rights to make and have made shall be retained by

ViaCell until and unless Amgen exercises its right to assume the rights and

responsibilities of Manufacturing Lead under Section 7.1(f).

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 4.3 OPTION EXERCISE. Prior [\*\*] for each Cell Therapy Product [\*\*],

ViaCell shall provide to Amgen a notice of ViaCell's intent to commence such

[\*\*] (which notice shall be provided only after ViaCell has provided to Amgen a

detailed written report in relation to [\*\*], the results of which support the

commencement of the [\*\*], which report has been approved by the JSC in

accordance with Section 4.1 of this Agreement), and Amgen shall have the right

to exercise the Option within [\*\*] of receiving such notice from ViaCell or at

any time prior to receiving such notice from ViaCell (the "Option Period").

Should Amgen choose to exercise an Option, it must do so by providing to ViaCell

a written notice thereof (an "Exercise Notice"). For the avoidance of doubt,

Amgen shall have the right to exercise each Option on a product-by-product and

indication-by-indication basis. If Amgen does not exercise the Option prior to

the expiration of the Option Period with respect to a Cell Therapy Product for

an indication, then that Cell Therapy Product for that indication will be deemed

an Unoptioned Cell Therapy Product and Amgen will no longer have an Option with

respect to that Cell Therapy Product for that indication.

 4.4 PAYMENT OF DEVELOPMENT COSTS. Within [\*\*] of the Transition Date,

Amgen shall pay to ViaCell [\*\*] of the Direct Development Costs incurred prior

to the Transition Date for the Collaboration Product and indication for which

Amgen has exercised its Option.

 4.5 TRANSITION OF RESPONSIBILITIES. After Amgen's exercise of the Option

and prior to the Transition Date, ViaCell will transfer to Amgen the IND and all

other Regulatory Filings for the Collaboration Product for which Amgen exercised

its Option. ViaCell shall also deliver to Amgen a complete copy of the IND and

any other Regulatory Filings for the Collaboration Product for which Amgen has

exercised its Option and any related correspondence with the FDA and any other

Regulatory Authority relating thereto, as well as all related Information and

Materials (including but not limited to data and results of Phase 1, Phase 2

and/or Phase 3 clinical trials, to the extent applicable). On and after the

Transition Date for a Collaboration Product, ViaCell will provide all assistance

and execute all documents reasonably requested to facilitate the transition of

the Development responsibilities, as described in Article III, and the

responsibilities of the Commercial Lead, as described in Article VI, for that

Collaboration Product to Amgen. For the avoidance of doubt, the exercise of the

Option will not affect the rights and responsibilities of the Parties with

respect to Cell Therapy Products and/or indications for which the Option Period

has not expired. [\*\*].

 4.6 TRANSFERABILITY. Except as otherwise set forth below or as otherwise

explicitly permitted by this Agreement, neither Party shall have the right to

assign, sublicense or transfer its rights with respect to any Cell Therapy

Product or Collaboration Product.

[\*\*] Portions of this exhibit have been omitted pursuant to a confidential

treatment request. An unredacted version of this exhibit has been filed with the

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 (A) Either Party shall have the right to assign its rights to any

or all Collaboration Products, provided however, that prior to such assignment,

that Party (the "Transferring Party") first provides the other Party (the

"Non-Transferring Party") [\*\*] The Non-Transferring Party's [\*\*] first shall

commence upon the Transferring Party providing a written notice describing in

detail the rights (including rights to any tangible or intangible property) it

desires to assign to a Third Party [\*\*] Upon receipt of a [\*\*] the

Non-Transferring Party shall have a [\*\*] in which to determine whether it

desires to [\*\*] proposing the terms on which [\*\*] (if at all). In the event that

the Transferring Party desires to [\*\*] the parties shall [\*\*] of the definitive

documents required to [\*\*] In the event that (i) the Transferring Party does not

desire to [\*\*] such Assets to the Non-Transferring Party [\*\*] or (ii) the

Parties are unable to [\*\*] of the date on which the Transferring Party indicates

its desire to [\*\*] such Assets to the Non-Transferring Party [\*\*] then the

Transferring Party shall [\*\*] In the event that the Non-Transferring Party does

not [\*\*] then the Transferring Party shall [\*\*] In the event that ViaCell

assigns its rights to any Collaboration Product to any Third Party under this

Section 4.6(a), Amgen shall have the right [\*\*] with respect to such

Collaboration Product, which right is exercisable within [\*\*]

 (B) For the avoidance of doubt, ViaCell shall have the right to

assign its rights to any Unoptioned Cell Therapy Product without restriction.

 (C) In the event of a Change of Control of ViaCell, [\*\*] for any

and/or all Collaboration Products which right is exercisable within [\*\*] after

the date Amgen became aware that the Change of Control occurred. At any time

after a Change of Control of ViaCell, for each Cell Therapy Product for which

Amgen elects to exercise its Option, [\*\*], which right is exercisable within

[\*\*] of the date of the exercise of the Option with respect to such Cell Therapy

Product.

 4.7 OPT-OUT. Each party shall have the right, upon [\*\*] written notice

(an "Opt-Out Notice") to the other Party to opt out of its rights with respect

to any Collaboration Product. [\*\*] after delivering such Opt-Out Notice (the

"Opt-Out Date") to the other Party, the Party so doing shall completely forfeit

all rights under this Agreement with respect to the Collaboration Product(s)

listed in the Opt-Out Notice, and all remaining rights shall immediately vest in

the other Party. The Party opting out shall, however, be responsible for and

obligated with respect to (i) [\*\*] and (ii) providing all assistance and

executing all documents as the other Party may reasonably request to facilitate

or assist in transitioning the roles and responsibilities previously held by the

Party opting out, subject to the terms of Section 7.3 below.

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treatment request. An unredacted version of this exhibit has been filed with the

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 ARTICLE 5

 REGULATORY

 5.1 REGULATORY PLAN(A) ViaCell shall be responsible for preparing and

submitting the Regulatory Plan section of the Program Plan with respect to Cell

Therapy Products to and for approval by the JSC, and shall update the Regulatory

Plan on an [\*\*] basis, [\*\*]; provided however, it is acknowledged and agreed

that the Regulatory Plan may need to be modified from time to time between [\*\*]

updates, based upon the results of clinical trials and other unanticipated

events. [\*\*].

 (B) Amgen shall be responsible for preparing and submitting the

Regulatory Plan section of the Program Plan with respect to Collaboration

Products to and for approval by the JSC, and shall update the Regulatory Plan on

an [\*\*] basis, [\*\*]; provided however, it is acknowledged and agreed that the

Regulatory Plan may need to be modified from time to time between [\*\*] updates,

based upon the results of clinical trials and other unanticipated events. [\*\*].

 5.2 REGULATORY LEAD. ViaCell shall be responsible for all regulatory

matters for Cell Therapy Products and Amgen shall be responsible for all

regulatory matters for Collaboration Products and each shall be referred to as

the "Regulatory Lead" therefor. Regulatory matters shall include, without

limitation, the filing and support of any Drug Approval Applications and matters

concerning Post-Approval Clinical Studies.

 5.3 RESPONSIBILITIES AND RIGHTS OF REGULATORY LEAD. During the time

period for which it is responsible for regulatory matters, the Regulatory Lead

for a product and/or indication shall be the trial sponsor with Regulatory

Authorities. With respect to regulatory matters for which it is responsible, the

Regulatory Lead for a product and/or indication shall have the right to monitor,

review and direct all aspects of regulatory matters relating thereto, including

making all strategic and tactical decisions with respect thereto (in accordance

with the Regulatory Plan) and establishing the methods and means by which it

performs such services, including the management of permitted subcontractors,

pursuant to Section 18.6. The Regulatory Lead shall have responsibility for all

associated official correspondence, communications and Regulatory Filings with

Regulatory Authorities regarding such matters.

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treatment request. An unredacted version of this exhibit has been filed with the

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 5.4 RIGHT TO CROSS-REFERENCE IND AND EQUIVALENT FOREIGN FILINGS. ViaCell

shall have the right to cross-reference Amgen's IND and equivalent foreign

filings for Contributed Products solely for the purpose of Development and

Commercialization of Cell Therapy Products, Collaboration Products and

Unoptioned Cell Therapy Products. For the avoidance of doubt, ViaCell shall not

have the right, for any reason or under any circumstance, to access, copy or

review Amgen's INDs or equivalent foreign filings for Contributed Products. In

the event that a Regulatory Authority requests information from ViaCell related

to the manufacture or quality of Contributed Products and ViaCell is required to

supply such information to the Regulatory Authority in order to pursue or

maintain Regulatory Approval for a Cell Therapy Product, Collaboration Product

or Unoptioned Cell Therapy, at ViaCell's request [\*\*], Amgen shall provide the

requested information by either of the following methods, as elected by Amgen

[\*\*]: (i) directly to the Regulatory Authority requesting such information; or

(ii) to ViaCell, in order for ViaCell to respond to the Regulatory Authority's

request in a timely manner.

 5.5 DRUG APPROVAL APPLICATIONS. Amgen shall own (be the sponsor and

party of record of) all Drug Approval Applications for Collaboration Products in

the Territory, and ViaCell shall own (be the sponsor and party of record of) all

Drug Approval Applications for Cell Therapy Products in the Territory.

 5.6 TRANSFER OF REGULATORY FILINGS AND REGULATORY APPROVALS. If

ownership of a Regulatory Filing or Regulatory Approval in any country cannot be

transferred from the owning Party to the other Party pursuant to the terms of

this Agreement, the owning Party shall grant to the other Party an exclusive

right of access and reference to such Regulatory Filing or Regulatory Approval

in such country in order to enable the other Party to become a sponsor and party

of record of an IND or equivalent foreign filing. If such right of access and

reference is not sufficient to permit the other Party to file a Drug Approval

Application and receive Regulatory Approval or to Develop, manufacture or

Commercialize a Collaboration Product, the owning Party shall provide the other

Party with any and all information necessary for the other Party to carry out

such activities and to receive Regulatory Approval in its own name.

 5.7 ADVERSE EVENT REPORTING; CUSTOMER COMPLAINTS.

 (A) ViaCell shall maintain a record of all non-medical and medical

product-related complaints and reports of adverse events that it receives with

respect to each Cell Therapy Product, and Amgen shall maintain a record of all

non-medical and medical product-related complaints and reports of adverse events

that it receives with respect to each Collaboration Product. At least [\*\*] per

[\*\*], each Party shall provide to the other with copies of any complaint

(including all adverse events) received by it relating to a Cell Therapy Product

and/or a Collaboration Product. In the event of the occurrence of any serious

adverse event(s) (as defined in ICH Guideline E2A), the Parties shall meet (in

person or via telephone) within [\*\*] of first becoming aware of such occurrence

to discuss steps necessary to address any safety concerns and share any relevant

information regarding such occurrence

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 (B) On an indication-by-indication basis for each Cell Therapy

Product, ViaCell (as the IND sponsor and party of record) shall be responsible

for reporting to Regulatory Authorities any adverse experience and safety issues

for such Cell Therapy Product in compliance with the requirements of all

applicable laws and regulations (including the FD&C Act and the PHS Act, and any

amendments thereto and the regulations promulgated thereunder, and the

equivalent laws, rules and regulations of other countries in the Territory) and

shall promptly thereafter provide Amgen with a copy of such report.

 (C) On an indication-by-indication basis for each Collaboration

Product, Amgen shall be responsible (as the IND sponsor and party of record) for

reporting to Regulatory Authorities any adverse experience and safety issues

regarding such Collaboration Product in compliance with the requirements of all

applicable laws and regulations (including the FD&C Act and the PHS Act, and any

amendments thereto and the regulations promulgated thereunder, and the

equivalent laws, rules and regulations of other countries in the Territory) and

shall promptly thereafter provide ViaCell with a copy of such report.

 5.8 COMMUNICATIONS.

 (A) The Regulatory Lead for a product and/or indication under this

Agreement shall have exclusive responsibility for all correspondence and for any

official communication (except as the other Party may be required by applicable

laws or regulations or a Regulatory Authority to communicate) regarding such

product and/or indication with applicable Regulatory Authorities in the

Territory and the other Party shall have the right to be present (and to

participate at the request of the Regulatory Lead or the Regulatory Authority)

at all face-to-face meetings and scheduled conference calls regarding

significant clinical events or decisions. If one Party is required by applicable

laws or regulations or a Regulatory Authority to disclose information to such

Regulatory Authority having jurisdiction in the Territory, including information

regarding the manufacture of Cell Therapy Products and/or Collaboration

Products, such Party will notify the other Party before communicating with the

Regulatory Authority.

 (B) ViaCell (to the extent it is the Manufacturing Lead) will

reasonably cooperate with Amgen to make and provide copies of any direct

communications by ViaCell with the Regulatory Authorities having jurisdiction in

the Territory regarding the manufacture of any Collaboration Product by ViaCell

for supply to Amgen; provided, however, that ViaCell's obligation to provide

Amgen with information relating to the manufacture of the Collaboration

Product(s) is limited to the circumstance where such information is reasonably

required for Amgen to carry out its responsibilities Developing the

Collaboration Product and/or as Regulatory Lead and/or Commercial Lead, or is

required by law, rule, regulation or a Regulatory Authority having jurisdiction

in the Territory, to have access; but Amgen shall only be entitled to use such

information to the extent required by such law, rule, regulation or Regulatory

Authority or to the extent reasonably required to carry out its responsibilities

under this Agreement, including its Development responsibilities and/or its

responsibilities as Regulatory and/or Commercial Lead. For so long as ViaCell is

supplying Amgen with Collaboration Products hereunder, ViaCell shall have the

right to be present at all meetings and to participate in all

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telephone calls with Regulatory Authorities having jurisdiction in the Territory

wherein the CMC contained in any Regulatory Filing is to be discussed.

 (C) Each Party shall promptly notify the other Party of and

provide such other Party with a copy of any correspondence or other reports or

complaints submitted to or received from any Regulatory Authority, or other

Third Party claiming that any Promotional Materials are inconsistent with the

Product Labeling or are otherwise in violation of any applicable laws and

regulations (including the FD&C Act and the PHS Act, and any amendments thereto

and the regulations promulgated thereunder, and the equivalent laws, rules and

regulations of other countries in the Territory).

 5.9 APPLICATIONS FOR REGULATORY EXCLUSIVITY. The Parties recognize that

exclusivity rights granted or provided for under regulatory laws of the

countries of the Territory may be commercially significant to Collaboration

Products. To the extent permitted by law, as between the Parties, Amgen shall

have the exclusive right to file for, request and maintain any regulatory

exclusivity rights for Collaboration Products in the Territory (including

without limitation regulatory exclusivity rights based upon an orphan drug

designation of a Collaboration Product) and to conduct and prosecute any

proceedings or actions to enforce such regulatory exclusivity rights.

 5.10 RECALLS.

 (A) The Parties shall exchange their internal standard operating

procedures, if any, as to product recalls ("SOPs") reasonably promptly after the

Effective Date and thereafter reasonably promptly after such SOPs are approved

or modified. If either Party becomes aware of information about quantities of

Collaboration Product supplied from ViaCell to Amgen, which may not conform to

the specifications for such Collaboration Product, or for which there are

potential adulteration, misbranding and/or other issues regarding safety or

effectiveness, or for which the Collaboration Product itself is alleged or

proven to be the subject of a Recall in any country in the Territory, it shall

promptly so notify the other Party and the Party having the right to control

such a Recall pursuant to Section 5.10(b) may take [\*\*] when the regulatory

timeframes or public safety considerations so require. In all other

circumstances, Recalls can only be made by [\*\*] consent of the JSC and shall be

made by the Party having the first right to control a Recall pursuant to Section

5.10(b). The JSC will meet (in person, by telephone or otherwise) to discuss

such other circumstances and to consider appropriate courses of action, which

courses of action with respect to a Recall shall be consistent with the internal

SOP of the Party having the first right to control such Recall pursuant to

Section 5.10(b), and the other Party shall make available to the Party having

the first right to control such Recall all pertinent records which the Party

having the first right to control such Recall may reasonably request to assist

in effecting any Recall.

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 (B) With respect to any clinical studies conducted by ViaCell

under this Agreement, ViaCell shall have the exclusive right to control a Recall

of any Cell Therapy Products in the Territory, and shall conduct such a Recall

at any time at which regulatory timeframes or public safety considerations so

require. Other than with respect to any clinical studies conducted by ViaCell

under this Agreement, Amgen shall have the exclusive right to control any Recall

of the Collaboration Products in the Territory, and shall conduct such a Recall

at any time at which regulatory timeframes or public safety considerations so

require. ViaCell and Amgen shall each maintain complete and accurate records of

any Recall it has the right to control pursuant to this Section 5.10 for such

periods as may be required by legal requirements, but in any event for no less

than [\*\*].

 5.11 MANUFACTURING. ViaCell shall bear initial responsibility for

preparing communications to Regulatory Authorities relating to manufacturing

issues for Collaboration Products, subject to review by Amgen, and ViaCell shall

cooperate with Amgen with respect to other Regulatory Authority reporting,

communications and Regulatory Filings regarding the Collaboration Products.

 5.12 COMPLIANCE WITH LAWS AND REGULATIONS. To the extent applicable, each

Party agrees to maintain all regulatory and governmental permits, licenses and

approvals and to comply with all laws, rules and regulations that are applicable

to each such Party's activities and the particular stage of Development or

Commercialization of the Collaboration Products including, without limitation,

GLPs, GCPs and GMPs, as such standards are defined in accordance with the

applicable guidance and regulations including the International Conference of

Harmonization (ICH), the U.S. Food, Drug and Cosmetic Act, 21 C.F.R. Section

210, 312, 1271 et seq. and the regulations promulgated thereunder, and any

amendments thereto and the regulations promulgated thereunder, and the

equivalent laws, rules and regulations of other countries in the Territory.

 ARTICLE 6

 COMMERCIALIZATION

 6.1 COMMERCIAL PLAN. Amgen shall be responsible for preparing and

submitting the Commercial Plan section of the Program Plan with respect to

Collaboration Products to and for approval by the JSC, and shall update the

Commercial Plan on an [\*\*] basis, [\*\*]; provided however, it is acknowledged and

agreed that the Commercial Plan may need to be modified from time to time based

upon commercial considerations including unanticipated events. [\*\*].

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 6.2 RESPONSIBILITIES AND RIGHTS OF AMGEN. Amgen shall be the "Commercial

Lead" and be responsible for all aspects of Commercializing Collaboration

Product(s) in the Territory, including making all strategic and tactical

decisions with respect thereto. These activities shall include, without

limitation: (a) Commercial strategies (e.g., strategies for regulatory,

branding, product positioning, pre-launch, market research, launch and

post-launch marketing and promotion, pricing and reimbursement and field sales

force optimization); (b) packaging, labeling and language to be included in the

package insert; (c) forecasting sales and Commercial manufacturing production

requirements; (d) creating and developing Promotional Materials regarding

Collaboration Products which are intended for distribution to medical

professionals, other Third Parties and to the Parties' respective sales forces;

(e) Promotion; (f) Detailing, including setting sales force staffing levels and

Detailing levels; (g) sales and distribution, taking orders and distributing,

contracting, handling of returns, handling all aspects of order processing,

invoicing and collecting, warehousing, documenting inventory and receivables and

collecting prescription tracking, call reporting, handling data regarding sales

to hospitals and other end users and handling all other customer service-related

functions; (h) setting level of sampling; (i) selecting, obtaining and

maintaining generic names and Product Trademarks; (j) licensing or otherwise

acquiring rights to intellectual property from Third Parties; (k) supervising

and training of (and coordinating sales briefing meetings and disseminating

information, including all communications related to marketing and Promotion);

(l) establishing target call lists; (m) carrying out all aspects of conducting

all Post-Approval Clinical Studies; (n) preparing publications and presentations

of data regarding Collaboration Products and (o) establishing material transfer

agreements, clinical trial and other agreements, pursuant to Section 10.13. For

the avoidance of doubt, neither Party shall have any rights to commercialize

Cell Therapy Products and ViaCell reserves for itself all rights to

commercialize all Unoptioned Cell Therapy Products.

 6.3 MEDICAL AND OTHER INQUIRIES. Amgen shall have responsibility for all

correspondence and communication with physicians and other health care

professionals and customers in the Territory regarding Collaboration Product

complaints and all adverse drug experience information and all other

correspondence and communication with physicians and other health care

professionals and customers in the Territory relating to Collaboration Products.

Amgen shall keep such records and make such reports as shall be reasonably

necessary to document such communications in compliance with all applicable

regulatory requirements.

 6.4 PROMOTIONAL MATERIALS. Amgen shall be responsible for the creation,

preparation, production and reproduction of all Promotional Materials relating

to the Collaboration Products and for filing, as appropriate, such Promotional

Materials with all Regulatory Authorities.

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 (A) To the extent permitted by law, regulation or Regulatory

Authorities, each Collaboration Product will be marketed as a joint product of

ViaCell and Amgen and references to ViaCell and ViaCell's logo shall be included

on all Product Labeling in a manner that is substantially similar in terms of

prominence and in all other respects as the references to Amgen and Amgen's logo

included in such Product Labeling and in a manner that complies with the terms

and conditions of this Agreement (including without limitation Section 10.5

hereof). Amgen shall use Commercially Reasonable Efforts in designing and

producing Promotional Materials to promote the Collaboration Products and shall

use Commercially Reasonable Efforts to use ViaCell's name and logo in such

Promotional Materials with reasonably similar prominence as Amgen's name and

logo, and pursuant to the terms of Section 6.4(b), shall consider in good faith

the comments and suggestions of ViaCell in relation to such Promotional

Materials, including with respect to the use of ViaCell's logo.

 (B) Prior to the use thereof, Amgen shall provide to ViaCell a

prototype of any Promotional Materials or Product Labeling which contains

ViaCell's corporate name and/or logo, so that ViaCell may review the manner in

which its corporate name and/or logo are used therein. ViaCell shall notify

Amgen within [\*\*] after delivery of such prototype, whether ViaCell approves or

disapproves of the manner of such use and, in the case of disapproval, the

specific reasons therefor and an acceptable alternative. In the event that

ViaCell fails to so notify Amgen within such [\*\*] period, ViaCell shall be

deemed to have approved the manner of such use. In the event that (i) the

Promotional Materials and Product Labeling comply with Section 6.4(a), but

ViaCell disapproves of the manner of such use and (ii) the Parties are unable to

reach agreement regarding the manner of such use before an applicable regulatory

or other legal deadline for submission of Promotional Materials, then Amgen

shall retain the right to print and use, and ViaCell agrees to use, to the

extent applicable, such Promotional Materials and Product Labeling without

ViaCell's corporate name and/or logo. Amgen and ViaCell shall continue efforts

to reach agreement on approving Promotional Materials with ViaCell's corporate

name and/or logo that comply with Section 6.4(a).

 (C) Compliance with Laws, Regulations and Guidelines. Each Party

agrees to comply with all applicable laws, rules and regulations (e.g., the FD&C

Act, the PHS Act, the U.S. Foreign Corrupt Practices Act and any amendments

thereto and the regulations promulgated thereunder, and the equivalent laws,

rules and regulations in the Territory) and in all material respects to conform

its practices and procedures with, as applicable, the Pharmaceutical Research

and Manufacturers of America ("PhRMA") Code of Pharmaceutical Marketing

Practices and the American Medical Association ("AMA") Guidelines on Gifts to

Physicians from Industry, as the same may be amended from time to time, and

equivalent guidelines in the Territory with respect to the Commercialization of

Collaboration Products. Each Party shall conduct its business operations and

cause each of its employees, representatives and agents to do nothing which such

Party knows or reasonably should know would jeopardize the good will or

reputation of the other Party or the Cell Therapy Products or Collaboration

Products. Neither Party shall be required to undertake any activity relating to

the Commercialization of Cell Therapy Products or Collaboration Products that it

believes, in good faith, may violate any law or regulations. Each Party shall

promptly notify the other Party of and provide to that other Party a copy of any

correspondence or other reports with respect to the Promoting or Detailing of

Collaboration Products submitted to or received from PhRMA or the AMA or

equivalent organizations in the Territory and Amgen shall be responsible for

responding to such correspondence or other

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reports. Each Party shall in all material respects conform its practices and

procedures relating to educating the medical community in the U.S. with respect

to Collaboration Products to the Accreditation Council for Continuing Medical

Education ("ACCME") Standards for Commercial Support of Continuing Medical

Education and any applicable FDA regulations or guidelines, as the same may be

amended from time to time, and, as applicable, equivalent guidelines in the

Territory and each Party shall promptly notify the other Party of and provide to

the other Party a copy of any correspondence or other reports submitted to or

received from the ACCME with respect to Collaboration Products and Amgen shall

be responsible for responding to such correspondence or other reports.

 ARTICLE 7

 MANUFACTURE AND SUPPLY

 7.1 MANUFACTURING PLAN. Except as otherwise provided in this Agreement,

ViaCell shall be responsible for preparing and submitting the Manufacturing Plan

section of the Program Plan with respect to Cell Therapy Products and

Collaboration Products to and for approval by the JSC, and shall update the

Manufacturing Plan on an [\*\*] basis, [\*\*]; provided however, it is acknowledged

and agreed that the Manufacturing Plan may need to be modified from time to time

based upon commercial considerations including unanticipated events. [\*\*].

 7.2 RESPONSIBILITIES AND RIGHTS OF VIACELL. Subject to Section 7.2(g),

ViaCell shall be the "Manufacturing Lead" and ViaCell shall be responsible for

manufacturing and supplying Cell Therapy Products and Collaboration Products for

Development and Commercialization in the Territory. Except as otherwise provided

in this Agreement, ViaCell shall have responsibility for all aspects of

manufacturing Collaboration Products(s) in the Territory, including making all

strategic and tactical decisions with respect to establishing the methods and

means by which it performs such services and fulfills its regulatory

responsibilities over all steps of the manufacturing process. These activities

include, without limitation, bulk manufacture, finish and fill, labeling and

packaging, lot release and process development work to support quality

assurance, improving manufacturing/cost efficiency and commercial scale-up

manufacturing.

 (a) Manufacture of Cell Therapy Products for Development. With

respect to each Cell Therapy Product selected to be advanced to IND-enabling

toxicology studies and/or clinical studies, ViaCell shall use its Commercially

Reasonable Efforts to develop and initiate scale-up of the manufacturing

process, to develop a manufacturing process(es) suitable for commercial

production, and to supply clinical grade, filled and finished, selected Cell

Therapy Products for use in all pre-clinical trials and clinical trials in the

Territory, in quantities and with specifications sufficient to support the

required studies.

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 (b) Manufacture of Collaboration Product(s) for Commercialization.

With respect to each Collaboration Product, ViaCell shall use its Commercially

Reasonable Efforts to supply filled and finished Collaboration Products approved

by each applicable Regulatory Authority for commercial use in the Territory, in

quantities (as reasonably forecast by Amgen) and with specifications consistent

with the Collaboration Product. Amgen shall determine its good faith projected

Collaboration Product supply needs, taking into consideration inventory levels,

and will deliver an annual rolling forecast, updated quarterly.

 (c) Standards of Supply. ViaCell will use its Commercially

Reasonable Efforts to manufacture Cell Therapy Products and Collaboration

Products in accordance with current GMP in a manufacturing process and facility

as described in the applicable Regulatory Filings filed with the Regulatory

Authority. ViaCell shall be responsible for the labeling, packaging and lot

release of Collaboration Products it manufactures or has manufactured. ViaCell

shall be responsible for the quality assurance/quality control (QA/QC) of all

Collaboration Products manufactured by or for it and shall provide a

certification that all supplied Collaboration Products shall conform to the

product specifications.

 (d) Manufacturing Cost and Budget. [\*\*]. For Commercial

Collaboration Products, [\*\*] shall be estimated and established [\*\*] . Within

[\*\*] following the end of ViaCell's fiscal year, ViaCell shall compare its

actual annual [\*\*] for the prior year calculated using the [\*\*] amount (vials

manufactured multiplied by [\*\*] per vial, excluding any annual adjustment

related to the previous year, but including any interim adjustment charged to

Amgen as described below). ViaCell shall use this annual adjustment to

increase/decrease the [\*\*] for the then-current Calendar Year in order to

recover/refund this difference from/to the Parties. The per unit annual

adjustment to the [\*\*] shall be based upon the forecasted annual requirements

(as included in the rolling forecast to be supplied by the Commercial Lead on a

quarterly basis) for such following year. Until the annual adjustment is

calculated, ViaCell shall estimate the annual adjustment to be included in the

following year's [\*\*] in good faith. If the rolling forecast volume over the

next [\*\*] to be supplied to the Commercial Lead decreases by more than [\*\*]

compared to the previously submitted rolling forecast, [\*\*] for the year will be

recalculated. If, based upon such recalculation, ViaCell determines that [\*\*]

has increased, an interim adjustment shall be made to [\*\*] and such interim

adjustment will apply to all Commercial Collaboration Products supplied for the

remainder of the year on a Collaboration Product-by-Collaboration Product basis.

ViaCell will give Amgen [\*\*] written notice prior to applying the interim

increase in [\*\*]

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treatment request. An unredacted version of this exhibit has been filed with the

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 (e) Third Party Licenses.

 (I) [\*\*] deems necessary for a license or other rights or to

incur an obligation to make payments to any Third Parties in return for a

license to Third Party Patent Rights and other intellectual property rights

necessary or useful to make or have made Collaboration Product in any country in

the Territory, for subsequent use, sale or other exploitation or transfer of

physical possession of or title in a Collaboration Product in the Territory.

[\*\*] shall have the right to incorporate Third Party payments made to any Third

Party within the [\*\*] as set forth in Exhibit B, provided however that prior to

entering into any such agreement, [\*\*] shall provide to [\*\*] a summary of the

subject matter of the proposed license and the proposed financial terms and

consider in good faith any comments or suggestions [\*\*] may timely provide in

relation thereto. In the event that ViaCell becomes aware of any Third Party

intellectual property rights that ViaCell believes in good faith would be

necessary or useful in connection with the manufacturing or Commercialization of

Collaboration Products, ViaCell shall identify such Third Party intellectual

property rights to Amgen and the parties shall discuss in good faith whether

obtaining a license would be beneficial.

 (II) [\*\*] deems necessary for a license or other rights or to

incur an obligation to make payments to any Third Parties in return for a

license to Third Party Patent Rights and other intellectual property rights

necessary or useful to make or have made Cell Therapy Product(s) in any country

in the Territory, for subsequent use, sale or other exploitation or transfer of

physical possession of or title in a Cell Therapy Product in the Territory. [\*\*]

shall have the right to incorporate Third Party payments made to any Third Party

within the [\*\*] as set forth in Exhibit B, provided however that prior to

entering into any such agreement, [\*\*] shall provide to [\*\*] a summary of the

subject matter of the proposed license and the proposed financial terms and

consider in good faith any comments or suggestions [\*\*] may timely provide in

relation thereto. In the event that Amgen becomes aware of any Third Party

intellectual property rights that Amgen believes in good faith would be

necessary or useful in connection with the manufacturing or future

Commercialization of Cell Therapy Products, Amgen shall identify such Third

Party intellectual property rights to ViaCell and the Parties shall discuss in

good faith whether obtaining a license would be beneficial. Notwithstanding the

foregoing, ViaCell may not obtain a license to Third Party Patent Rights to make

or have made a Cell Therapy Product without the prior written consent of Amgen

if the license requires ViaCell to pay, on a product-by-product basis a

percentage-based royalty that exceeds (A) [\*\*] or (B) together with all other

percentage-based royalties owed to Third Parties for licenses to make or have

made such Cell Therapy Products entered into by ViaCell without Amgen's prior

written consent, [\*\*].

 (F) Supply Performance. In the event that ViaCell does not

exercise Commercially Reasonable Efforts to perform its duties as Manufacturing

Lead for a Collaboration Product, Amgen [\*\*] upon written notice to ViaCell.

[\*\*], a Manufacturing Transition shall be initiated. For the avoidance of doubt,

ViaCell shall be deemed to have not exercised Commercially Reasonable Efforts

upon the occurrence of any of the following events (except to the extent that

such events are the direct result of Amgen's failure to supply Contributed

Products in accordance with the terms and conditions of this Agreement):

 (I) [\*\*];

 (II) [\*\*];

 (III) [\*\*]; and

 (IV) [\*\*];

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treatment request. An unredacted version of this exhibit has been filed with the

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provided however that Amgen may not have the right to effect a Manufacturing

Transition as a result of any of these failures, unless Amgen has given ViaCell

prior written notice of such failure and ViaCell has not cured such failure

within [\*\*]of the receipt of such notice. Amgen's right to assume the rights and

responsibilities of Manufacturing Lead is in addition to and does not relieve

the Parties of any rights or responsibilities under this Agreement.

 (G) Manufacturing Transition.

 (I) Upon Amgen providing a written notice to ViaCell of

Amgen exercising its rights to assume the rights and obligations of the

Manufacturing Lead pursuant to Section 7.2(f) or 4.6 with respect to a

Collaboration Product (a "Manufacturing Transition Notice"), ViaCell shall

promptly provide to Amgen all information, Materials and ViaCell Know-How as may

be useful or necessary to facilitate Amgen's manufacture of that Collaboration

Product.

 (II) Upon delivering a Manufacturing Transition Notice to

ViaCell, the JSC shall no longer have any rights or obligations with respect to

the Collaboration Product that is the subject of such manufacturing Transition

Notice, and Amgen shall have sole decision making authority with respect to all

aspects of such Collaboration Product, including the Development, manufacturing

and Commercialization of such Collaboration Product, without any obligation to

discuss information with or disclose information to ViaCell (other than

information relating to Operating Profit or Loss for such Collaboration Product,

including without limitation the information described in Section 9.2 hereof),

[\*\*].

 (III) ViaCell and Amgen shall [\*\*].

 7.3 MANUFACTURE OF CONTRIBUTED PRODUCTS. Except as otherwise explicitly

provided below, Amgen will have the sole right and responsibility to manufacture

Contributed Products in accordance with the supply obligations set forth below.

At Amgen's sole discretion, Amgen may decide to transfer manufacturing

responsibility for a Contributed Product to a third party manufacturer,

including but not limited to a contract manufacturer.

 (A) Supply Terms.

 (I) Subject to Section 7.3(a)(ii) below, Amgen shall supply

Contributed Products to ViaCell and any Sublicensees in reasonable quantities,

as requested by ViaCell or such Sublicensees from time to time.

 (II) Amgen shall only be obligated to supply Contributed

Products from readily available inventory on an as-available basis and in the

filled and finished form of Amgen's existing inventory, and Amgen shall not, for

any reason or under any circumstance, be obligated to manufacture Contributed

Products for the purpose of supplying Contributed Products to ViaCell or any

Sublicensees. Prior to the Transition Date, ViaCell shall pay Amgen [\*\*] per

vial of Flt3-L supplied, [\*\*] per vial of SCF supplied, and for any other

Contributed Products, a price to be agreed by the Parties prior to ViaCell

accepting such product as a Contributed Product. After the Transition Date,

ViaCell shall pay Amgen a price equal to [\*\*].

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treatment request. An unredacted version of this exhibit has been filed with the

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 (B) cGMP and Specifications. Where required, Contributed Products

supplied by Amgen hereunder shall be manufactured in accordance with current

Good Manufacturing Practices (as defined in the United States Code of Federal

Regulations) and the manufacturing process approved by relevant Regulatory

Authorities, and shall at least conform to the current specifications as of the

Effective Date, a copy of which has been provided to ViaCell. Amgen shall

promptly notify ViaCell of any changes to the specifications of Contributed

Products.

 (C) No Transfer of Manufacturing Know-How. Amgen shall have no

obligation for any reason or under any circumstance, to provide ViaCell or any

Third Party with any information or materials regarding Amgen's know-how related

to the manufacturing of Contributed Products. Subject to the foregoing, in the

event that Amgen is unable or unwilling to supply ViaCell's or any Sublicensee's

requirements of Contributed Products in accordance with the terms and conditions

of this Agreement, including as a result of a Force Majeure, Amgen shall grant

to ViaCell a non-exclusive license under the Amgen Patent Rights to make or have

made (under contract with no more than two (2) Third Parties, who shall be

permitted under such contract(s) solely to supply Contributed Products

exclusively to ViaCell and any Sublicensees) and import ViaCell's and any

Sublicensee's requirements of Contributed Products for the sole purpose of

practicing ViaCell's and any Sublicensee's rights under the non-exclusive

license as set forth in Section 10.2.

 (D) Demand Forecasts. ViaCell shall provide Amgen a written report

containing a forecasted estimate of the following Calendar Year's requirements

of Contributed Products. The report will include monthly requirements for each

SKU (Stock Keeping Unit) and will be delivered in the prior Calendar Year in

time to meet Amgen's budget timeline. Updates to the forecast shall be provided

in writing to Amgen [\*\*] prior to the beginning of each [\*\*].

 (E) Orders. ViaCell and any Sublicensees shall specify by binding

written firm purchase order its or their reasonable requirements of Contributed

Products not later than [\*\*] prior to ViaCell's or such Sublicensees' requested

delivery date. Each binding firm purchase order shall specify the quantity of

vials (or other relevant unit) of Contributed Products and the requested

delivery date. Subject to the terms of Section 7.2(a) above, Amgen shall supply

Contributed Products to ViaCell and any Sublicensees on the requested delivery

date in response to any such written firm purchase order.

 (F) Shipment and Delivery. All Contributed Products supplied by

Amgen to ViaCell shall be delivered to ViaCell Ex Works ("EXW") (IncoTerms 2000)

a designated Amgen manufacturing facility. ViaCell shall be responsible for all

delivery logistics, delivery validation, insurance and compliance with laws and

regulations (including but not limited to those applicable to the export of each

EXW delivery from the United States to destinations outside the United States)

and all costs associated with the foregoing. Title to each EXW delivery and risk

of damage or loss shall pass to ViaCell immediately after leaving Amgen's

designated facility.

 (G) Release of Licensed Product. Amgen shall be responsible for

the final release of Contributed Product.

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treatment request. An unredacted version of this exhibit has been filed with the

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 (H) Statements and Payments. For Contributed Products shipped

prior to the Transition Date, Amgen shall, on an as-delivered basis, provide

ViaCell with an invoice setting forth the quantities of Contributed Products

delivered to ViaCell and the supply price. Payments shall be due from ViaCell

within [\*\*] following ViaCell's receipt of an invoice. ViaCell shall pay all

applicable excise, sales or other transfer taxes assessed on the supply of

Contributed Products hereunder. Delivery costs shall be paid directly by ViaCell

to its designated carrier. Any sums not paid when due are subject to a service

charge of [\*\*] per month or the maximum rate permitted by law, whichever is

lower. [\*\*].

 7.4 LIMITATION ON APPLICATION OF SUPPLY TERMS. The provisions in this

Agreement governing per vial price apply solely in the context of this agreement

and are not meant to be effective independent from the terms contained herein.

 ARTICLE 8

 COLLABORATION CONSIDERATION

 8.1 LICENSE FEE. The parties recognize that, pursuant to the terms and

conditions set forth in the License Agreement by and between ViaCell and Amgen

dated April 9, 2002 and related Warrant Purchase Agreement, ViaCell issued Amgen

a warrant to purchase 560,000 shares of common stock of ViaCell as partial

consideration for a non-exclusive license to SCF set forth therein.

 8.2 MILESTONE PAYMENTS. For each Collaboration Product, Amgen shall pay

ViaCell a [\*\*] one-time milestone payment via wire transfer to an account

designated by ViaCell within [\*\*] following the achievement of the first

Regulatory Approval of the first indication in the U.S. for such Collaboration

Product. For the avoidance of doubt, changes in presentation, formulation,

delivery or dosage form shall not trigger a payment obligation under this

Section 8.2

 8.3 RELATED AGREEMENTS. The Parties hereby acknowledge and agree that

concurrently with entering into this Agreement the parties are also entering

into that certain Securities Purchase Agreement and certain ancillary agreements

relating thereto, each of even date herewith.

 ARTICLE 9

 PROGRAM PLAN; OPERATING PROFIT OR LOSS

 9.1 OPERATING PROFIT OR LOSS SHARING. On and after the Transition Date,

Amgen and ViaCell shall each share on a [\*\*] basis the Operating Profit or Loss

for all Collaboration Products.

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treatment request. An unredacted version of this exhibit has been filed with the

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 9.2 ACCOUNTING AND REPORTING OF COLLABORATION PROFITS AND LOSSES.

 (A) [\*\*] after the end of each Calendar Quarter after the first

Transition Date, the Parties shall each submit to the other Party a written

report (including supporting documentation) setting forth in reasonable detail

an accounting of any Net Sales and Allowed Expenditures (as defined in Exhibit

B) that have been incurred during the most recent Calendar Quarter.

 (B) After the first Transition Date, Amgen shall establish and

maintain an accounting of the Net Sales and Allowed Expenditures in the

Operating Profit or Loss account in accordance with the terms of Exhibit B.

Within [\*\*] following the end of each Calendar Quarter, Amgen shall submit to

ViaCell a written report setting forth in reasonable detail (and including

supporting documentation) an accounting of all items credited or charged to the

Operating Profit or Loss account and the calculation of any net amount owed by

ViaCell to Amgen or by Amgen to ViaCell, as the case may be, in order to ensure

the appropriate [\*\*] sharing of Operating Profit or Loss. The net amount payable

(taking into account each Party's [\*\*] charged to the Operating Profit or Loss

in accordance with the terms of this Agreement and Exhibit B) shall be paid by

Amgen or ViaCell, as the case may be, within [\*\*] after receipt of such written

report, without regard to any dispute as to the amounts under this Section

9.2(b). With the exception of [\*\*] and [\*\*], neither Party may charge expenses

to the Operating Profit or Loss account for [\*\*].

 (C) In the event of a dispute with respect to any amounts under

Sections 9.2(a) or 9.2(b), the disputing Party shall provide written notice

within [\*\*] after receipt of the written report in question, specifying such

dispute and explaining the basis of the dispute. The Parties shall promptly

thereafter meet and negotiate in good faith a resolution to such dispute. In the

event that the Parties are unable to resolve such dispute within [\*\*] after

notice by the disputing Party, the matter shall be resolved in a manner

consistent with the procedures set forth in Article 17.

 (D) ViaCell and Amgen shall work in good faith to realize the

benefits of federal and state tax incentives and credits including orphan drug

credits pursuant to IRC Section 41 and Section 45C for the activities or

expenditures of either Party under this Agreement or any legal entity formed

pursuant to Section 14.2(f) of this Agreement.

 (E) Upon termination of this Agreement, the Parties shall

immediately (but in no event any later than [\*\*] from such termination) conduct

a final accounting to reconcile, settle and close the Operating Profit or Loss

account; provided however, that after such final accounting, with respect to

surviving sections that reference the charging or crediting of the Operating

Profit or Loss account, such charges or credits shall be made directly between

the Parties and shall proportionally borne by the Parties in the same manner as

if such Operating Profit or Loss account was still open.

 ARTICLE 10

 INTELLECTUAL PROPERTY

 10.1 TECHNOLOGY OWNERSHIP. Except as otherwise provided below in this

Agreement, ownership of inventions shall be determined in accordance with the

rules of inventorship under

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United States patent laws. Amgen shall own all right, title and interest in and

to Amgen Technology, and any Confidential Information contained therein shall be

considered the Confidential Information of Amgen. ViaCell shall own all right,

title and interest in and to ViaCell Technology, and any Confidential

Information contained therein shall be considered the Confidential Information

of ViaCell. All right, title and interest in and to Joint Know-How (which shall

be considered the joint Confidential Information of the Parties) and Joint

Patent Rights shall be owned, as between the Parties, jointly by ViaCell and

Amgen. Each Party shall have the unrestricted, royalty-free, worldwide right to

make, have made, use, sell, lease, offer to sell or lease, import, export or

otherwise exploit, or transfer physical possession of or title in Joint Know-How

and the subject matter of the Joint Patent Rights, without accounting. All

rights, title and interest in and to Product Trademarks shall be owned by Amgen.

 10.2 CONTRIBUTED PRODUCT LICENSES; SUBLICENSE RIGHTS.

 (A) LICENSE. Amgen hereby grants to ViaCell a fully paid-up,

royalty-free, non-exclusive license, with no right to grant sublicenses except

pursuant to Section 10.2(b), under the Amgen Technology solely to use

Contributed Products in the Territory for the purpose of (i) making, having made

(solely in accordance with Section 18.6), using, selling, having sold, offering

to sell, having offered for sale, importing, having imported, exporting or

otherwise transferring physical possession of or otherwise transferring title in

either or both of Cell Therapy Products or Unoptioned Cell Therapy Products and

(ii) making and having made Collaboration Products. For the avoidance of doubt,

except as provided in Section 7.3(c), ViaCell shall not have the right to make

or have made any Contributed Products, and under no circumstance shall ViaCell

have the right to sell, offer for sale or import any Contributed Products.

 (B) SUBLICENSES. Subject to the other terms and conditions of this

Agreement, ViaCell may only grant sublicenses in connection with a subcontract

permitted in accordance with Section 18.6 below or the assignment of rights to a

Collaboration Product or an Unoptioned Cell Therapy Product in accordance with

Section 4.6 above, and sublicenses granted shall be permitted solely to the

extent consistent with the license provided in Section 10.2(a). For a sublicense

to be valid, the sublicensee under any sublicense permitted under the previous

sentence (the "ViaCell Sublicensee") must in advance execute a written

sublicense agreement between ViaCell and the applicable ViaCell Sublicensee

("ViaCell Sublicense Agreement(s)") which contains the applicable terms and

conditions of this Agreement, including without limitation terms and conditions

regarding the purchase of the Contributed Products from Amgen which are

substantially the same as the terms and conditions set forth in Article 7 of

this Agreement. Each ViaCell Sublicense Agreement shall provide that Amgen shall

be a third-party beneficiary of the provisions of such agreement. ViaCell shall

promptly notify Amgen upon learning of any breach of any provision of a ViaCell

Sublicense Agreement, and either (i) [\*\*] enforce the terms of such ViaCell

Sublicense Agreement or (ii) [\*\*] permit Amgen to enforce such terms or

conditions in its own right and ViaCell shall reasonably cooperate in such

enforcement. Sublicensees shall not be permitted to grant any further

sublicenses under the Amgen Technology.

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 10.3 COLLABORATION PRODUCT LICENSE; SUBLICENSE RIGHTS.

 (A) LICENSE. ViaCell hereby grants to Amgen a fully paid-up,

royalty-free, exclusive license, with no right to grant sublicenses except

pursuant to Section 10.3(b), under the ViaCell Technology to use, sell, offer to

sell, import, export or otherwise transfer physical possession of or otherwise

transfer title in Collaboration Products in the Territory, solely in compliance

with the terms and conditions of this Agreement. In addition, effective only

upon a Manufacturing Transition, ViaCell hereby grants to Amgen a fully paid-up,

royalty-free, non-exclusive license, including the right to sublicense, under

the ViaCell Technology to make and have made the applicable Collaboration

Product in the Territory, solely in compliance with the terms and conditions of

this Agreement.

 (B) SUBLICENSES. Subject to the other terms and conditions of this

Agreement, Amgen may grant sublicenses (solely to the extent consistent with the

license provided in Section 10.3(a)) under the ViaCell Technology; provided that

the sublicensee under any such permitted sublicense (the "Amgen Sublicensee")

expressly agrees to be bound by a written sublicense agreement between Amgen and

the applicable Amgen Sublicensee ("Amgen Sublicense Agreement(s)") which

contains the applicable terms and conditions of this Agreement. Each Amgen

Sublicense Agreement shall provide that ViaCell shall be a third-party

beneficiary of the provisions of such agreement. Amgen shall promptly notify

ViaCell upon learning of any breach of any provision of an Amgen Sublicense

Agreement, and either (i) [\*\*] enforce the terms of such Amgen Sublicense

Agreement or (ii) [\*\*] permit ViaCell to enforce such terms or conditions in its

own right and Amgen shall reasonably cooperate in such enforcement. Sublicensees

shall not be permitted to grant any further sublicenses under the ViaCell

Technology.

 10.4 PASS THROUGH RESTRICTIONS. Certain license rights granted to a Party

under this Article 10 may include a sublicense of Patent Rights and know-how of

Third Parties under Third Party licenses. Notwithstanding anything to the

contrary in this Agreement, the Party receiving a sublicense of such Third Party

licenses shall, in exercising such sublicense rights, comply with, perform in

accordance with, and be subject to the provisions of such Third Party licenses

relating to Contributed Products or Collaboration Products if the granting Party

has provided a copy of such Third Party license to the Party receiving a

sublicense of such Third Party licenses. Each Party shall promptly provide to

the other Party a copy of any notice of breach received by it under any such

Third Party license.

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 10.5 TRADEMARK LICENSE.

 (A) ViaCell hereby grants to Amgen a nonexclusive, royalty-free

license, including the right to grant sublicenses to Amgen Sublicensees in

connection with a sublicense of the rights granted under Section 10.3 above,

under ViaCell Trademarks to use and display the ViaCell Trademarks in connection

with Collaboration Products in the Territory solely in compliance with the terms

and conditions of this Agreement; provided, however, that, in connection with

any sublicense of the rights granted in this Section 10.5(a), the applicable

Amgen Sublicense Agreement shall contain terms and conditions substantially the

same as this Section 10.5.

 (B) Amgen acknowledges ViaCell's exclusive ownership of the

ViaCell Trademarks and that use of any of the ViaCell Trademarks by Amgen shall

inure to the sole benefit of ViaCell. Amgen shall not do or suffer to be done

any act or thing inconsistent with such ownership and shall not acquire or claim

or assist third parties in acquiring or claiming any title in or to any of the

ViaCell Trademarks by virtue of this Agreement or through Amgen's use of the

ViaCell Trademarks. In addition, Amgen hereby covenants that it shall not

directly or indirectly undertake any action that in any manner might question,

contest, challenge, infringe or impair the validity, enforceability, scope of

rights or title of ViaCell in any of the ViaCell Trademarks at any time during

the term of this Agreement and thereafter.

 (C) Amgen shall use the ViaCell Trademarks only in a manner and

form: (i) designed to maintain the high quality of the ViaCell Trademarks; (ii)

consistent with the use of the ViaCell Trademarks by ViaCell; (iii) that

protects ViaCell's ownership interest therein; and (iv) that complies with all

applicable federal, state, local and foreign laws, rules and regulations,

including without limitation all applicable trademark laws, rules and

regulations.

 (D) During the term of this Agreement and thereafter, Amgen shall

not adopt or use any word, name, mark, symbol, other designation or trade style

which in ViaCell's sole reasonable opinion is likely to cause confusion or

dilute any of the ViaCell Trademarks, and shall not make any unlicensed use of

trademarks or service marks which, in ViaCell's sole reasonable opinion, is

confusingly similar to or dilutive of any of the ViaCell Trademarks. In

addition, Amgen agrees that it shall not use any of the ViaCell Trademarks in

combination with any word, name, mark, symbol, other designation or trade style

so as to create a composite mark, unless such use is explicitly authorized in

writing by ViaCell.

 (E) Amgen agrees and undertakes that all Collaboration Products

identified by any of the ViaCell Trademarks shall be at least equal in quality

to the mutually agreed specifications therefor (the "Quality Standard"). To the

extent that a Manufacturing Transition has been triggered, ViaCell shall have

the right no more than [\*\*] to request a reasonable number of samples of the

Collaboration Product for the sole purpose of auditing the quality of such

Collaboration Product to determine whether such Collaboration Products meet the

Quality Standard. Should ViaCell notify Amgen that a Collaboration Product

identified by any of the ViaCell Trademarks fails to comply with the Quality

Standard in effect at that time, Amgen shall correct such defects in accordance

with such reasonable notification from ViaCell within [\*\*] of such notice.

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 (F) ViaCell shall have the right to audit and inspect, upon

advance written notice and during regular business hours, Amgen's use of

Trademarks licensed hereunder.

 10.6 PROSECUTION.

 (A) (I) Amgen shall be solely responsible for and have complete

discretion with respect to (using the firm of [\*\*] or such other mutually

acceptable outside counsel) the filing, prosecution, defense and maintenance of

the Amgen Patent Rights before all patent authorities in the Territory.

 (II) Amgen shall be responsible for (using the firm of [\*\*]

or such other mutually acceptable outside counsel) the filing, prosecution,

defense and maintenance of the Joint Patent Rights before all patent authorities

in the Territory.

 (III) ViaCell shall have the right to review and comment on

the filing, prosecution and defense by Amgen of the Joint Patent Rights. To that

end, Amgen shall instruct such outside counsel to furnish ViaCell with a

reasonably complete draft of each submission to a patent authority materially

affecting Joint Patent Rights no later than [\*\*] prior to the date such

submission is proposed to be made, or if given less than [\*\*] to respond as soon

as practicable, and Amgen will reasonably consider any of ViaCell's reasonably

timely comments thereon. Additionally, Amgen shall instruct its outside counsel

to provide ViaCell with a copy of each submission made to and document received

from a patent authority materially affecting any Joint Patent Rights reasonably

promptly after making such filing or receiving such document. If Amgen

determines in its sole discretion to not file, prosecute, defend or maintain any

patent application or patent within the Joint Patent Rights in any country, then

Amgen shall provide ViaCell with [\*\*] prior written notice of such determination

and shall provide ViaCell with the right and opportunity to file, prosecute,

defend and maintain such patent application or patent on behalf of Amgen.

 (B) (I) ViaCell shall be responsible for the filing, prosecution,

defense and maintenance of ViaCell Patent Rights before all patent authorities

in the Territory, provided, however, that ViaCell shall do so using mutually

reasonably acceptable outside counsel. As of the Effective Date, Amgen agrees

that [\*\*] are reasonably acceptable outside counsel, provided however that Amgen

reserves the right to re-evaluate such outside counsel in future.

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 (II) Amgen shall have the right to review and comment on such

filing, prosecution and defense by ViaCell of the ViaCell Patent Rights. To that

end, ViaCell shall instruct such outside counsel to furnish Amgen with a

reasonably complete draft of each submission to a patent authority materially

affecting ViaCell Patent Rights no later than [\*\*] prior to the date such

submission is proposed to be made, or if given less than [\*\*] to respond as soon

as practicable, and ViaCell will reasonably consider any of Amgen's reasonably

timely comments thereon. Additionally, ViaCell shall instruct its outside

counsel to provide Amgen with a copy of each submission made to and document

received from a patent authority materially affecting any ViaCell Patent Rights

reasonably promptly after making such filing or receiving such document. If,

after the Transition Date for a Collaboration Product, ViaCell determines in its

sole discretion to not file, prosecute, defend or maintain any patent

application or patent within the ViaCell Patent Rights having at least one valid

and enforceable claim covering the composition, manufacture or use of that

Collaboration Product in any country, then ViaCell shall provide Amgen with [\*\*]

prior written notice of such determination and shall provide Amgen with the

right and opportunity to file, prosecute, defend and maintain such patent

application or patent on behalf of ViaCell.

 (C) Amgen and ViaCell shall cooperate with each other and render

all reasonable assistance in prosecuting and maintaining all intellectual

property licensed under this Agreement. Both Parties shall meet regularly, but

not less than on a [\*\*] basis, to discuss the prosecution (and other related

proceedings, such as interferences and oppositions) of all intellectual property

licensed under this Agreement. Amgen and ViaCell shall cooperate with each other

in any such matters, and shall sign any necessary legal papers and provide the

Party responsible for such prosecution with data or other information in support

thereof (and use their best efforts to ensure the cooperation of any of their

respective personnel, Affiliates and licensee(s) as might reasonably be

requested).

 (D) Amgen shall be responsible (using [\*\*] or other mutually

acceptable outside counsel) for the filing, prosecution, defense and maintenance

of the Product Trademarks before all trademark authorities in the Territory.

 (E) ViaCell hereby covenants that prior to preparing, filing or

taking any step in the prosecution of any patent claims that cover the

compositions-of-matter or use of any Contributed Product(s), it will seek and

use its best efforts to accommodate Amgen's, and its patent counsel's, comments

regarding such patent claims and any disclosure supporting such patent claims.

To the extent that ViaCell breaches its covenant in the immediately preceding

sentence, upon Amgen's request ViaCell shall promptly assign to Amgen all

rights, title and interest in all patent applications and issued patents that

cover the compositions-of-matter or uses of any Contributed Product(s).

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 10.7 INFRINGEMENT OF PATENT RIGHTS AND PRODUCT TRADEMARKS.

 (A) After the Transition Date for a Collaboration Product, Amgen

may, but shall not be obligated to, elect to enforce ViaCell Patent Rights

having at least one valid and enforceable claim covering the composition,

manufacture or use of that Collaboration Product and rights in ViaCell Know-How

against any actual, alleged or threatened infringement by Third Parties and to

defend such ViaCell Patent Rights and ViaCell Know-How against any challenges in

the Territory. In the event that Amgen shall so elect, Amgen shall seek and

reasonably consider ViaCell's comments before determining the strategy and

ViaCell shall reasonably assist and cooperate in any such enforcement or

defense.

 (B) In the event Amgen does not commence an enforcement and/or

defense action pursuant to this Section 10.7 within [\*\*] after Amgen is notified

by ViaCell in writing of an infringement of ViaCell Patent Rights in the

Territory (or of the filing of a declaratory judgment action), ViaCell shall be

entitled to bring and prosecute such an action. If ViaCell elects to bring and

prosecute such an action, then ViaCell shall seek and reasonably consider

Amgen's comments on strategy.

 (C) Amgen may, but shall not be obligated to, enforce the Product

Trademarks against any actual, alleged or threatened infringement by Third

Parties or from any unfair trade practices, trade dress imitation, passing off

of counterfeit goods or like offenses. In the event that Amgen shall so elect,

Amgen shall seek and reasonably consider ViaCell's comments before determining

the strategy and ViaCell shall reasonably assist and cooperate in any such

enforcement or defense.

 (D) The Party bringing suit under this Section 10.7 shall be [\*\*] to

carry out the activities described in this Section 10.7; and each Party shall

[\*\*] described in this Section 10.8. Recoveries in any actions under this

Section 10.7 shall [\*\*].

 10.8 INFRINGEMENT OF THIRD PARTY RIGHTS.

 (A) Amgen shall have the exclusive right, but shall not be

obligated, to defend any actual, alleged or threatened claim or action which

names Amgen and/or both Parties and which claims (i) the infringement of Third

Party Patent Rights or other intellectual property rights through the making,

having made, using, selling, offering to sell, importing exporting or otherwise

transferring physical possession of or otherwise transferring title in a

Collaboration Product or (ii) that a Product Trademark infringes any Third Party

trade name, service mark, logo or trademark. If necessary, ViaCell will assist

and cooperate with Amgen in any such defense. If Amgen does not defend such

claim or action, then ViaCell has the right, but shall not be obligated, to

defend such claim or action.

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 (B) ViaCell shall have the exclusive right, but shall not be

obligated, to defend any actual, alleged or threatened claim or action which

names ViaCell but does not name Amgen, and which claims the infringement of (i)

Third Party Patent Rights or other intellectual property rights through the

making, having made, using, selling, offering to sell, importing exporting or

otherwise transferring physical possession of or otherwise transferring title in

a Collaboration Product or (ii) any Third Party trade name, service mark, logo

or trademark. If necessary, Amgen will assist and cooperate with ViaCell in any

such defense.

 (C) A Party defending a suit pursuant to this Section 10.8 shall be

[\*\*] described in this Section 10.8; and each Party shall [\*\*] described in this

Section 10.8. Losses in any actions under this Section 10.8 shall [\*\*].

 10.9 COOPERATION.

 (A) Each Party shall promptly notify the other upon becoming aware

of (i) any actual, alleged or threatened Third Party claim or action against

ViaCell and/or Amgen that a Contributed Product, Cell Therapy Product or

Collaboration Product infringes any Third Party intellectual property right; or

(ii) any Third Party infringement or misappropriation of the Amgen Patent

Rights, rights in Amgen Know How, ViaCell Patent Rights having at least one

valid and enforceable claim covering the composition, manufacture or use of a

Collaboration Product or rights in ViaCell Know How, (iii) any actual, alleged

or threatened Third Party claim or action against ViaCell and/or Amgen that a

Product Trademark infringes any Third Party trade name, service mark, logo or

trademark; or (iv) any Third Party infringement of the Amgen Trademarks, ViaCell

Trademarks that are applied to or used with Collaboration Products or any

Promotional Materials, Product Trademarks, Amgen Patent Rights, Amgen Know-How,

ViaCell Patent Rights having at least one valid and enforceable claim covering

the composition, manufacture or use of a Collaboration Product, ViaCell

Know-How, Joint Patent Rights or Joint Know-How.

 (B) The Parties shall confer with each other regarding the bringing

or defense of any suit under Section 10.7 and/or 10.8 including, if necessary

(and at each Party's own expense), assisting and cooperating with the other

Party in any such suit. If the Party bringing or defending such suit finds it

necessary or desirable to join the other Party as a party, the other Party shall

execute all papers or perform such other acts as may reasonably be required by

the Party bringing or defending such suit.

 (C) Neither Party shall enter into any settlement of any suit

brought or defended under Section 10.7 and/or 10.8 that affects the other

Party's rights or interests without such other Party's written consent, which

consent shall not be unreasonably withheld or delayed.

 (D) A Party bringing or defending suit under Section 10.7 and/or

10.8 shall notify the other Party of all substantive developments with respect

to such enforcement or defensive actions including, but not limited to, all

material filings, court papers and other related documents, substantive

settlement negotiations and offer of settlement.

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 10.10 TECHNICAL ASSISTANCE. In addition to other assistance explicitly set

forth in this Agreement, during the period of the Term, Amgen and ViaCell shall

each provide the other Party with reasonable technical assistance relating to

the use of such Amgen Know-How and ViaCell Know-How, respectively, and Joint

Know-How solely to the extent permitted under the license(s) granted to the

other Party in this Agreement. In addition, during the Term each Party shall

make its employees, consultants and agents reasonably available upon reasonable

notice during normal business hours at their respective places of employment to

consult with the other Party on issues relating to any aspect of the subject

matter of this Agreement and in connection with any request from any Regulatory

Authority, including those relating to regulatory, scientific and technical

issues.

 10.11 EMPLOYEE OBLIGATIONS. Prior to beginning work relating to any aspect

of the subject matter of this Agreement and/or being given access to ViaCell

Know-How, Amgen Know-How or Joint Know-How or the Confidential Information of

the other Party, each employee, consultant or agent of ViaCell and Amgen shall

have signed or shall be required to sign a non-disclosure and invention

assignment agreement pursuant to which each such person shall agree to comply

with all of the obligations of ViaCell or Amgen, as appropriate, substantially

including: (a) promptly reporting any invention, discovery, process, software

program or other intellectual property right, as appropriate within ViaCell

Know-How, Amgen Know-How or Joint Know-How; (b) assigning to ViaCell or Amgen,

as appropriate, all of his or her right, title and interest in and to any such

invention, discovery, process, software program or other intellectual property

right; (c) cooperating in the preparation, filing, prosecution, maintenance,

enforcement and defense of any Amgen Patent Rights, ViaCell Patent Rights, Joint

Patent Rights and the enforcement and defense of Amgen Know-How, ViaCell

Know-How and Joint Know-How; (d) performing all acts and signing, executing,

acknowledging and delivering any and all papers, documents and instruments

required for effecting the obligations and purposes of this Agreement and (e)

abiding by the obligations of confidentiality and non-use set forth in this

Agreement. It is understood and agreed that any such non-disclosure and

invention assignment agreement need not be specific to this Agreement.

 10.12 PATENT MARKING. Collaboration Products shall be marked with

appropriate patent numbers or indicia of Patent Rights that cover the

Collaboration Products, to the extent permitted by law in those countries of the

Territory in which such markings have notice value as against infringers of

patents.

 10.13 THIRD PARTY RESEARCH AGREEMENTS. The Parties shall, through the JSC,

agree upon and coordinate Third Party material transfer agreements and

collaboration agreements with academic or governmental research institutions

related to the Development of Collaboration Products or involving the use of

Collaboration Products, in a manner so as to conserve the available quantities

of the Parties' research materials and to avoid compromise of the Parties'

abilities to fulfill their responsibilities under the Program Plan and so as to

maintain access to relevant intellectual property rights. The form of any such

Third Party material transfer agreement or collaboration agreement shall be

agreed upon by the Parties. Notwithstanding the above, other than with respect

to Collaboration Products, neither Party may transfer the other Party's

Materials to any such academic or governmental research institution, without the

express written consent of the other Party.

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 10.14 NO IMPLIED LICENSES. Except as explicitly set forth in their

Agreement, neither Party shall be deemed to have granted, whether by implication

or otherwise, any right or license to the other Party.

 ARTICLE 11

 PAYMENTS; RECORDS; AUDIT

 11.1 PAYMENTS.

 (A) U.S. Dollars. All payments to be made under this Agreement shall

be made in U.S. Dollars by bank wire transfer in immediately available funds to

a bank account designated from time-to-time by the Party receiving the funds.

 (B) Foreign Exchange. Currencies other than United States Dollars

shall be converted into the United States Dollar equivalent at the average rate

of exchange for the Calendar Quarter to which such payments relate (as reported

in Bloomberg Professional, a service of Bloomberg L.P.) or in the event

Bloomberg Professional is not available then The Wall Street Journal, for the

currency of the country in which the sale is made.

 (C) Late Payments. Any amounts not paid by a Party when due under

this Agreement shall be subject to interest from and including the date payment

is due through and including the date upon which such Party has made a wire

transfer of immediately available funds into an account designated by the other

Party of such payment at a rate equal to the lesser of (i) the sum of [\*\*] plus

the [\*\*] of interest quoted in the Money Rates section of the on-line edition of

the Wall Street Journal (at http://www.interactive.wsj.com) calculated daily on

the basis of a 365-day year or (ii) the highest rate permitted by applicable

law.

 (D) Blocked Currency. With respect to receipt of a foreign currency

for sales of Collaboration Products, if the Commercial Lead and its Affiliates

are unable to convert such foreign currency into United States Dollars for

reasons beyond their respective control, or are restricted by law or regulation

from remitting funds from any country of sale, the Commercial Lead shall cause

such payment to be made by deposit to the credit and account of both Parties (or

their respective nominee(s)) in any commercial bank designated by the Commercial

Lead in the applicable country. The Commercial Lead shall deliver to the other

Party proper evidence of such deposit.

 11.2 TAXES.

 (A) Taxes. All excises, taxes, and duties (collectively "Taxes")

levied on account of payments made by Amgen to ViaCell pursuant to this

Agreement will be the responsibility of and paid by ViaCell or subject to the

withholding, remittance, and offset provisions of this Section 11.2.

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 (B) Withholding by Amgen. In the event that Amgen determines that

laws or regulations require withholding of Taxes from any payment to ViaCell

hereunder, such Taxes will be deducted from such payment by Amgen and will be

remitted by Amgen to the appropriate tax authority. Amgen will furnish ViaCell

with proof of payment of such Taxes. In the event that documentation is

necessary in order for ViaCell to secure an exemption from or a reduction in any

withholding of Taxes, ViaCell shall provide such documentation in a timely

manner to Amgen.

 (C) Amgen's Right of Offset. In the event that the governing tax

authority retroactively determines that a payment made to ViaCell pursuant to

this Agreement should have been subject to withholding (or to additional

withholding) for Taxes, Amgen will have the right to offset such amount

(including any interest and penalties that may be imposed thereon) against

future payment obligations of Amgen under this Agreement; provided, however,

that if no further payments or insufficient further payments are available

against which offset may be pursued, Amgen may pursue reimbursement by any

remedy (at law or in equity) available to it. ViaCell have no liability for

interest or penalties imposed as a result solely of Amgen's negligent or willful

failure to withhold Taxes.

 11.3 RECORDS; AUDIT. The Parties shall keep or cause to be kept such

records as are required in sufficient detail to track and determine, in a manner

consistent with GAAP, the accuracy of calculations of all sums or credits due

under this Agreement to accurately account for all Direct Development Costs and

all items within the Operating Profit or Loss account. Such records shall be

retained for a period of the later of: (i) a [\*\*] period following the year in

which any payments were made hereunder, and (ii) the expiration of the

applicable tax statute of limitations (or any extensions thereof), or such

longer period as may be required by law. [\*\*] per [\*\*] each Party shall have the

option to engage, [\*\*], an independent certified public accountant, appointed by

the auditing Party and reasonably acceptable to the audited Party, to examine in

confidence the books and records of the Party being audited as may be necessary

to determine, with respect to any [\*\*], the correctness or completeness of any

report or payment required to be made under this Agreement; provided however,

that the books and records for any particular [\*\*] shall only be subject to one

audit. The report of such accountant shall be limited to a certificate verifying

any report made or payment submitted by the audited Party during such period but

may include, in the event the accountant shall be unable to verify the

correctness of any such payment, information relating to why such payment is

unverifiable. All information contained in any such certificate shall be deemed

the Confidential Information of the audited Party hereunder. If any audit

performed under this Section 11.4 (showing the calculation of a reimbursement or

payment amount) discloses a variance of more than [\*\*] from the amount of the

original report, the audited Party shall bear the full cost of the performance

of such audit. Upon the expiration of [\*\*] following the end of any particular

[\*\*], the calculation of any such amounts payable with respect to such

particular [\*\*] shall be binding and conclusive upon a Party entitled to such

audit and the other Party or its Affiliates shall be released from any liability

or accountability with respect to such amounts for such [\*\*].

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treatment request. An unredacted version of this exhibit has been filed with the

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 ARTICLE 12

 PUBLICATIONS

 12.1 PROCEDURE. The JSC shall determine the overall strategy for

publication and presentation of results of pre-clinical and clinical studies of

Cell Therapy Products and Collaboration Products. [\*\*]. Each Party to this

Agreement recognizes that the publication of papers regarding results of and

other information regarding the activities under this Agreement, including oral

presentations and abstracts, may be beneficial to both Parties provided such

publications are subject to reasonable controls to protect Confidential

Information and other interests of the Parties. In particular, it is the intent

of the Parties to maintain the confidentiality of any Confidential Information

included in any patent application until such patent application has been

published. Accordingly, each Party will have the right to review and approve any

paper proposed for publication by the other Party, including oral presentations

and abstracts, which utilizes data generated under this Agreement and/or

includes Confidential Information of the other Party. Before any such paper is

submitted for publication or an oral presentation is made, the Party publishing

or presenting will deliver a complete copy of the paper or materials and

abstracts for oral presentation to the other Party at least [\*\*] prior to

submitting the paper to a publisher or making the presentation. The other Party

will review any such paper and give its comments to the publishing Party within

[\*\*] after the delivery of such paper to the other Party. With respect to oral

presentation materials and abstracts, the other Party will make reasonable

efforts to expedite review of such materials and abstracts, and will return such

items as soon as practicable to the presenting Party with appropriate comments,

if any, but in no event later than [\*\*] after the date of delivery to the other

Party. The publishing Party will comply with the other Party's request to delete

references to the other Party's Confidential Information in any such paper,

materials and abstracts and agrees to withhold publication of same for an

additional [\*\*] in order to permit the Parties to obtain patent protection, if

either of the Parties deems it necessary, in accordance with the terms of this

Agreement.

 12.2 CREDIT. Any such publication or presentation will include recognition

of the contributions of the other Party according to standard practice for

assigning scientific credit, either through authorship or acknowledgment, as may

be appropriate.

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treatment request. An unredacted version of this exhibit has been filed with the

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 ARTICLE 13

 CONFIDENTIALITY

 13.1 TREATMENT OF CONFIDENTIAL INFORMATION. The Parties agree that during

the Term, and continuing until [\*\*] after this Agreement expires or terminates

and for Confidential Information that constitutes trade secrets, as defined

under the laws of the State of California, for so long as such Confidential

Information actually constitutes trade secrets, a Party receiving Confidential

Information of the other Party shall (a) maintain in confidence such

Confidential Information to the same extent such Party maintains its own

confidential or proprietary information or trade secrets of similar kind and

value (but at a minimum each Party shall use reasonable best efforts to maintain

such Confidential Information in confidence); (b) not disclose such Confidential

Information to any Third Party without the prior written consent of the

disclosing Party, except for (i) disclosures to its Affiliates and, pursuant to

Section 18.5, authorized subcontractors who (in the case of both Affiliates and

subcontractors) agree to be bound by obligations of non-disclosure and non-use

at least as stringent as those contained in this Article 13 and (ii) disclosures

to Third Parties as permitted by Section 13.4 hereof; and (c) not use such

Confidential Information for any purpose except those purposes permitted by this

Agreement. Neither Party shall knowingly disclose to the other Party any Third

Party information or know-how that such Party does not have the legal right to

disclose to the other Party and/or has a contractual obligation not to disclose

to the other Party.

 13.2 AUTHORIZED DISCLOSURE. Notwithstanding any other provision of this

Agreement, a Party may disclose Confidential Information of the other Party:

 (A) to the extent and to the persons and entities as required by an

applicable law, rule, regulation, legal process, court order or the rules of the

National Association of Securities Dealers or of a Regulatory Authority;

 (B) as necessary to file, prosecute or defend those patent

applications or patents for which either Party has the right to assume filing,

prosecution, defense or maintenance, pursuant to Article 10 of this Agreement;

 (C) to prosecute or defend litigation or otherwise establish rights

or enforce obligations pursuant to this Agreement, but only to the extent that

any such disclosure is necessary; or

 (D) in the event of a Recall, by the Party responsible for such

Recall pursuant to Section 5.9.

The Party required or intending to disclose the other Party's Confidential

Information under Sections 13.2(a) or (c) shall first have given prompt notice

to such other Party to enable it to seek any available exemptions from or

limitations on such disclosure requirement and shall reasonably cooperate in

such efforts by the other Party.

Additionally, notwithstanding anything herein or any other express or implied

agreement, arrangement or understanding to the contrary, the Parties acknowledge

and agree that (i) any obligations of confidentiality contained herein and

therein do not apply and have not applied from the commencement of discussions

between the Parties to the tax treatment and tax structure

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of the transactions contemplated by this Agreement (and any related transactions

or agreements) and (ii) each Party to this Agreement (and each of its employees,

representatives or other agents) may disclose to any and all persons, without

limitation of any kind, the tax treatment and tax structure of the transactions

contemplated by this Agreement and all materials of any kind (including opinions

or other tax analyses) that are provided to it relating to such tax treatment

and tax structure. This authorization to disclose the tax treatment and tax

structure is limited to the extent that confidentiality is required to comply

with any applicable securities laws. This authorization is not intended to

permit disclosure of any other information including, without limitation, (i)

any portion of any materials to the extent not related to the transaction's tax

treatment or tax structure, (ii) the identities of participants or potential

participants, (iii) the existence or status of any negotiations, (iv) any

pricing or financial information (except to the extent such pricing or financial

information is related to the transaction's tax treatment or tax structure), or

(v) any other term or detail not relevant to the transaction's tax treatment or

tax structure.

 13.3 TRANSFER OF MATERIALS. For purposes of this Agreement, the Parties

anticipate that each Party may transfer certain of its Materials to the other

Party. Each Party agrees that it will use such Materials of the other Party only

in accordance with the terms and conditions of this Agreement and will not

transfer such Materials to any Third Party without the consent of the other

Party, except as expressly permitted under this Agreement.

 13.4 PUBLICITY; TERMS OF AGREEMENT. The Parties agree that the material

terms of this Agreement shall be considered Confidential Information of both

Parties, subject to the special authorized disclosure provisions set forth below

in this Section 13.4 (in lieu of the authorized disclosure provisions set forth

in Section 13.2, to the extent of any conflict) and without limiting the

generality of the definition of Confidential Information. The Parties will

mutually agree on the text of a press release announcing the execution of this

Agreement. Thereafter, if either Party desires to make a public announcement

concerning this Agreement or the terms hereof, such Party shall give reasonable

prior advance notice of the proposed text of such announcement to the other

Party for its prior review and approval, such approval not to be unreasonably

withheld. A Party shall not be required to seek the permission of the other

Party to repeat any information as to the terms of this Agreement that has

already been publicly disclosed by such Party in accordance with the foregoing

or by the other Party. Either Party may disclose the terms of this Agreement (i)

as required by law, and (ii) to bona fide potential material investors or

acquirors and Representatives of such investors or acquirors who (in the case of

potential investors and acquirors and their Representatives) agree to be bound

by obligations of non-disclosure and non-use at least as stringent as those

contained in this Article 13. ViaCell may disclose the terms of the Agreement to

the parties to that certain Third Amended and Restated Investors' Rights

Agreement, dated as of September 30, 2003, among ViaCell and the investors

listed therein to obtain such parties consent thereunder. The Parties

acknowledge that Amgen and/or ViaCell may be obligated to file a copy of this

Agreement with the U.S. Securities and Exchange Commission, and each such Party

shall be entitled to make such filing, provided however, that it requests

confidential treatment of the more sensitive terms hereof to the extent such

confidential treatment is reasonably available to the filing Party under the

circumstances then prevailing. In the event of any such filing, the filing Party

will provide the non-filing Party with an advance copy of the Agreement marked

to show provisions for which the filing Party intends to seek

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confidential treatment, and the filing Party shall reasonably consider the

non-filing Party's timely comments thereon.

 ARTICLE 14

 REPRESENTATIONS, WARRANTIES AND COVENANTS

 14.1 MUTUAL REPRESENTATIONS AND WARRANTIES. Each Party hereby represents

and warrants to the other Party that as of the Effective Date:

 (A) Power and Authority. It has the corporate power, authority and

legal right to enter into this Agreement and perform its obligations hereunder

and has taken all necessary corporate action on its part required to authorize

the execution and delivery of the Agreement and the performance of its

obligations hereunder, including without limitation the right to grant the

licenses hereunder.

 (B) Binding Agreement. This Agreement has been duly executed and

delivered on behalf of ViaCell and constitutes a legal, valid and binding

obligation of ViaCell that is enforceable against it in accordance with its

terms.

 (C) No Conflict. The execution, delivery and performance of this

Agreement does not conflict with, and would not result in a breach of any

agreement, instrument or understanding, oral or written, to which it is a party

or by which it may be bound, nor violate any material law or regulation of any

court, governmental body or administrative or other agency having jurisdiction

over it.

 (D) Validity. It is aware of no action, suit, inquiry or

investigation instituted by any Third Party which questions or threatens the

validity of this Agreement.

 (E) Business Condition. It is not in violation of its charter,

bylaws, or any other organizational document, or in violation of any law,

administrative regulation, ordinance or order of any court or governmental

agency, arbitration panel or authority applicable to it, which violation,

individually or in the aggregate, would reasonably likely have a materially

adverse effect on its business or financial condition. Except as may be set

forth in any documents filed with the Securities and Exchange Commission, as

required to be filed by it under the Securities Act or Exchange Act, as the case

may be, or in the Securities Purchase Agreement entered into concurrently by the

Parties, it is not aware of any facts or circumstances, individually or in the

aggregate, which would reasonably likely have a materially adverse effect on its

business or financial condition.

 14.2 MUTUAL COVENANTS. Each Party hereby covenants to the other Party as

follows:

 (A) No Misappropriation. It shall not knowingly misappropriate the

trade secret of a Third Party in its activities to Develop, manufacture or

Commercialize Collaboration Products.

 (B) No Debarment. In the course of the Development, manufacture and

Commercialization of Collaboration Products and during the Term, such Party

shall not knowingly use and shall not have knowingly used any employee or

consultant who is or has been

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debarred by a Regulatory Authority or, to the best of such Party's knowledge, is

or has been the subject of debarment proceedings by a Regulatory Authority.

 (C) No Conflict. It shall not during the term of this Agreement

grant any right, license, consent or privilege to any Third Party(ies) in the

Territory which would conflict with the rights granted to the other Party under

this Agreement, and shall not take any action that would in any way prevent it

from assuming its obligations or granting the rights granted to the other Party

under this Agreement or that would otherwise materially conflict with or

adversely affect its obligations or its assumption of the rights granted to the

other Party under this Agreement.

 (D) Compliance. Each Party shall comply with all applicable

statutes, regulations and guidance of Regulatory Authorities in carrying out its

respective activities regarding the Development, manufacture and

Commercialization of Collaboration Products in the Territory.

 (E) Regulatory Data. It shall store and provide the other Party

access to source data supporting all Regulatory Filings and Regulatory Approvals

for the longer of (i) [\*\*] or (ii) the time period required by any applicable

Regulatory Authority in the Territory.

 (F) Formation of Legal Entity. In the event either Party establishes

that the formation of a partnership or other legal entity for which no

entity-level tax is imposed, co-owned by the Parties to further the Development,

manufacture and Commercialization of the Collaboration Products would be

beneficial for legal, tax or other reasons, and would not cause the other Party

any significant financial detriment, the other Party covenants that it shall

cooperate and take all reasonable steps necessary to form such entity.

 14.3 ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF VIACELL.

 (A) Corporate Existence. ViaCell hereby represents and warrants to

Amgen that as of the Effective Date of this Agreement it is a corporation duly

organized, validly existing and in good standing under the laws of the State of

Delaware, and has full corporate 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 contemplated in this Agreement.

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 (B) Diligence. ViaCell covenants that it shall use Commercially

Reasonable Efforts to carry out its obligations in accordance with the terms of

this Agreement including, as applicable, the Development and manufacture of Cell

Therapy Products and the manufacture of Collaboration Products in the Territory

in accordance with the terms of this Agreement. Without limiting the generality

of the foregoing obligation, ViaCell covenants that ViaCell shall use

Commercially Reasonable Efforts to administer a Cell Therapy Product to a

patient in a government-approved clinical trial [\*\*] after the Effective Date.

 (C) Exclusivity. ViaCell shall work exclusively with Amgen with

respect to Cell Therapy Products and Collaboration Products.

 14.4 ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF AMGEN.

 (A) Corporate Existence. Amgen hereby represents and warrants to

ViaCell that as of the Effective Date of this Agreement it is a corporation duly

organized, validly existing and in good standing under the laws of the State of

Delaware, and has full corporate 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 contemplated in this Agreement.

 (B) Diligence. Amgen covenants that it shall use Commercially

Reasonable Efforts to carry out its obligations under the terms of this

Agreement including, as applicable, the Development, manufacture and

Commercialization of Collaboration Products in the Territory in accordance with

the terms of this Agreement.

 14.5 DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE MATERIALS,

CONTRIBUTED PRODUCTS AND INFORMATION PROVIDED HEREUNDER ARE BEING PROVIDED "AS

IS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED

HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR

IMPLIED, OF ANY TYPE WHATSOEVER. EACH PARTY EXPRESSLY DISCLAIMS ANY WARRANTY OF

MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE OR OF NONINFRINGEMENT.

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 ARTICLE 15

 INDEMNIFICATION

 15.1 INDEMNIFICATION BY AMGEN. Amgen hereby agrees to defend, hold

harmless and indemnify (collectively "Indemnify" or "Indemnified") ViaCell and

its Affiliates, agents, directors, officers and employees (the "ViaCell

Indemnitees") from and against any and all Losses resulting directly or

indirectly from any Third Party claims, suits, actions or demands, whether

brought during or after the Term, arising out of (a) any of Amgen's

representations and warranties set forth in this Agreement being untrue in any

material respect when made; (b) any material breach or material default by Amgen

of its covenants and obligations under this Agreement; or (c) Amgen's carrying

out of activities outside the Program Plan during the Term or Amgen's negligence

or intentional misconduct (or the negligence or intentional misconduct of any

Third Party engaged by Amgen). To be eligible to be so Indemnified as described

in this Section 15.1, the ViaCell Indemnitees shall provide Amgen with prompt

notice of any claims, suits, actions or demands (with a description of the claim

and the nature and amount of any such Loss) giving rise to the indemnification

obligation pursuant to this Section 15.1 and the exclusive ability to defend

such claims, suits, actions or demands (with the reasonable cooperation of

ViaCell Indemnitees). ViaCell shall have the right to retain its own counsel, at

its own expense, if representation of the counsel of Amgen would be

inappropriate due to actual or potential differing interests between the

Parties. Neither Party shall settle or consent to the entry of any judgment with

respect to any claim for Loss for which indemnification is sought, without the

prior written consent of the other Party (not to be unreasonably withheld).

Amgen's obligation to Indemnify the ViaCell Indemnitees pursuant to this Section

15.1 shall not apply to the extent of any Losses (i) that arise from the

negligence or intentional misconduct of any ViaCell Indemnitee (including but

not limited to that arising from the Development or Commercialization of a

Collaboration Product by ViaCell); (ii) that arise from ViaCell's breach of any

representation, warranty, covenant or obligation under this Agreement; or (iii)

for which ViaCell is obligated to Indemnify the Amgen Indemnitees pursuant to

Section 15.2 of this Agreement.

 15.2 INDEMNIFICATION BY VIACELL. ViaCell hereby agrees to Indemnify Amgen

and its Affiliates, agents, directors, officers and employees (the "Amgen

Indemnitees") from and against any and all Losses resulting directly or

indirectly from any Third Party claims, suits, actions or demands, whether

brought during or after the Term, arising out of (a) any of ViaCell's

representations and warranties set forth in this Agreement being untrue in any

material respect when made; (b) any material breach or material default by

ViaCell of its covenants and obligations under this Agreement; (c) ViaCell's

carrying out of activities outside the Program Plan during the Term or ViaCell's

negligence or intentional misconduct (or the negligence or intentional

misconduct of any Third Party engaged by ViaCell) in carrying out its activities

set forth in the Program Plan including, without limitation, Development

activities of ViaCell; and/or (d) resulting from the use or sale of any Cell

Therapy Product or Unoptioned Cell Therapy Product. To be eligible to be

Indemnified as described above in this Section 15.2, the Amgen Indemnitees shall

provide ViaCell with prompt notice of any claims, suits, actions or demands

(with a description of the claim and the nature and amount of any such Loss)

giving rise to the indemnification obligation pursuant to this Section 15.2 and

the exclusive ability to defend such claims, suits, actions or demands (with the

reasonable cooperation of Amgen Indemnitees). Amgen shall have the right to

retain its own counsel, at its own expense, if representation of the counsel of

ViaCell would be inappropriate

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due to actual or potential differing interests between the Parties. Neither

Party shall settle or consent to the entry of any judgment with respect to any

claim for Loss for which indemnification is sought, without the prior written

consent of the other Party (not to be unreasonably withheld). ViaCell's

obligation to Indemnify the Amgen Indemnitees pursuant to this Section 15.2

shall not apply to the extent of any Losses (i) that arise from the negligence

or intentional misconduct of any Amgen Indemnitee (including but not limited to

that arising from the manufacture or Commercialization of a Collaboration

Product by Amgen); (ii) that arise from Amgen's breach of any representation,

warranty, covenant or obligation under this Agreement; or (iii) for which Amgen

is obligated to Indemnify the ViaCell Indemnitees pursuant to Section 15.1 of

this Agreement.

 15.3 JOINT LIABILITY. Other than as set forth in Section 15.1 or 15.2 and

after exhausting the minimum insurance coverage as listed in the table in

Section 15.4, any and all Losses arising from Third Party claims, suits, actions

or demands, whether brought during or after the Term, resulting directly or

indirectly out of the making, having made, using, selling, having sold, offering

for sale or resale, and/or otherwise Developing, manufacturing, or

Commercializing Collaboration Products (including a claim that a Collaboration

Product caused death or personal injury of any kind) during the Term shall be

charged to the Operating Profit or Loss account. In the event a Party becomes

aware of a claim which, if resulting in a Loss, it intends to charge to the

Operating Profit or Loss account, such Party shall inform the other Party of

such claim as soon as reasonably practicable after it receives notice thereof.

Subject to Section 10.7, ViaCell shall have the right to assume direction and

control of the defense of any claim relating to a Collaboration Product alleging

a date of injury (or in the event of a continuing injury alleging the then-most

recent date of injury) to be prior to the Transition Date for that Collaboration

Product, and Amgen shall have the right to assume direction and control of the

defense of any claim relating to a Collaboration Product alleging a date of

injury (or in the event of a continuing injury alleging the then-most recent

date of injury) to be upon or after the Transition Date for that Collaboration

Product. The Party not in control of such defense shall cooperate as requested

in the defense of the claim and if the Party in control of such defense finds it

necessary or desirable to join the other Party as a party, the other Party shall

execute all papers or perform such other acts as may reasonably be required by

the Party in control of such defense; provided however, that the other Party

shall have the right to retain its own counsel, at its own expense, if

representation by the counsel of the Party in control would be inappropriate due

to actual or potential differing interests between the Parties. Neither Party

shall settle or consent to the entry of any judgment with respect to any claim

for Losses associated with such claim, without the other Party's prior written

consent.

 15.4 INSURANCE. Within [\*\*] after the Effective Date, each Party shall at

its own expense procure and maintain during the Term and for a period of [\*\*]

thereafter an insurance policy/policies, including product liability insurance

(but excluding clinical trial insurance policies which shall be required only

while trials are ongoing), adequate to cover its obligations hereunder and which

is/are consistent with normal business practices of prudent companies similarly

situated. Amgen may self-insure all or part of any such obligation consistent

with pharmaceutical industry practices but ViaCell shall at all times maintain

the following minimum Third Party insurance coverage, provided that ViaCell need

not maintain clinical trial liability insurance prior to commencing its first

clinical trial:

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 Type of Coverage Amount

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 Commercial General Liability Insurance $[\*\*]

 $[\*\*]

 Product Liability Insurance $[\*\*]

 $[\*\*]

 Clinical Trial Liability Insurance $[\*\*]

 Workman's Compensation [\*\*]

Each insurance policy required by and procured by a Party under this Section

15.4 shall name the other Party as an additional insured. Such insurance shall

not be construed to create a limit of the insuring Party's liability with

respect to its indemnification obligations under this Article 15. Each Party

shall provide the other Party with a certificate of insurance or other evidence

of such insurance and/or self-insurance, upon request. Each Party shall provide

the other Party with written notice at least [\*\*] prior to the cancellation,

non-renewal or a material change in such insurance or self-insurance which

materially adversely affects the rights of the other Party hereunder.

 15.5 LIMITATION OF LIABILITY. NEITHER PARTY NOR ITS RESPECTIVE AFFILIATES

SHALL BE LIABLE FOR SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES,

WHETHER IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE INCURRED BY

THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO

DAMAGES MEASURING LOST PROFITS OR BUSINESS OPPORTUNITIES.

 ARTICLE 16

 TERM AND TERMINATION

 16.1 TERM. This Agreement shall become effective on the Effective Date and

shall remain in full force and effect, unless earlier terminated pursuant to

this Article 16, until the later of: (a) the expiration of the Amgen Patent

Rights or (b) the date on which there are no Collaboration Products being

Developed or Commercialized by the Parties.

 16.2 TERMINATION FOR DILIGENCE FAILURE. In the event ViaCell is in an

uncured material breach of its diligence obligations set forth in the second

sentence of Section 14.3(b), Amgen shall have the right, in its sole discretion,

to terminate this Agreement by providing [\*\*] prior written notification of

termination to ViaCell.

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 16.3 MUTUAL CONSENT. This Agreement shall terminate upon the mutual

written consent of the Parties and, unless otherwise specified in such written

consent, shall be effective [\*\*] after the date of last signature of the Parties

to such mutual written consent.

 16.4 TERMINATION FOR DEFAULT.

 (A) In the event any material representation or warranty made

hereunder by either Party shall have been untrue in any material respect

("Representation Default"), or upon any material breach or material default of a

material obligation of this Agreement by a Party ("Performance Default"), the

Party not in default ("Non-Defaulting Party") must first give the other Party

("Defaulting Party") written notice thereof ("Notice of Default"), which notice

must state the nature of the Representation Default or Performance Default in

reasonable detail and must request the Defaulting Party cure such Representation

Default or Performance Default within [\*\*]. During any such [\*\*] period after

receipt or delivery of a Notice of Default under this Section 16.4(a) for which

termination of this Agreement, in whole or in part, is a remedy, all of the

Parties' respective rights and obligations under the affected parts of this

Agreement, including but not limited to Development, manufacture and

Commercialization, shall (to the extent applicable) remain in force and effect.

If the Defaulting Party shall dispute the existence, extent or nature of any

default set forth in a Notice of Default, the Parties shall use good faith

efforts to resolve the dispute.

 (B) ViaCell Default. In the event of a Representation Default or a

Performance Default by ViaCell that shall not have been cured within the period

set forth in Section 16.4(a) above after receipt of a Notice of Default, Amgen,

at its option, may terminate this Agreement upon [\*\*] prior written notice. The

effects of such termination will occur in accordance with Section 16.6(a).

 (C) Amgen Default. In the event of a Representation Default or a

Performance Default by Amgen that shall not have been cured within the period

set forth in Section 16.4(a) after receipt of a Notice of Default, ViaCell, at

its option, may terminate this Agreement upon [\*\*] prior written notice. The

effects of such termination will occur in accordance with Section 16.6(b).

 (D) Excluded Events. For the avoidance of doubt, in the event that

ViaCell fails to exercise Commercially Reasonable Efforts in relation to its

obligations to manufacture Collaboration Products, then such failure to exercise

Commercially Reasonable Efforts shall be deemed to not constitute a Performance

Default.

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 16.5 BANKRUPTCY.

 (A) Amgen may terminate the Agreement if ViaCell shall file in any

court or agency pursuant to any statute or regulation of any state or country, a

petition in bankruptcy or insolvency or for reorganization or for an arrangement

or for the appointment of a receiver or trustee of ViaCell or of its assets, or

if ViaCell proposes a written agreement of composition or extension of its

debts, or if ViaCell shall be served with an involuntary petition in bankruptcy

or seeking reorganization, liquidation, dissolution, winding-up arrangement,

composition or readjustment of its debts or any other relief under any

bankruptcy, insolvency, reorganization or other similar act or law of any

jurisdiction now or hereafter in effect, or there shall have been issued a

warrant of attachment, execution, distraint or similar process against it, filed

in any insolvency proceeding, and such petition shall not be dismissed within

[\*\*] after the filing thereof, or if ViaCell shall propose or be a party to any

dissolution or liquidation, or if ViaCell shall make an assignment for the

benefit of creditors. The effects of such termination will occur in accordance

with Section 16.6(a).

 (B) All rights and licenses granted under or pursuant to this

Agreement by Amgen or ViaCell are, and shall otherwise be deemed to be, for

purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to

"intellectual property" as defined under Section 101 of the U.S. Bankruptcy

Code. The Parties agree that each Party shall retain and may fully exercise all

of its rights and elections under the U.S. Bankruptcy Code. The Parties further

agree that, in the event of the commencement of a bankruptcy proceeding by or

against a bankrupt Party under the U.S. Bankruptcy Code, the other Party shall

be entitled to a complete duplicate of (or complete access to, as appropriate)

any intellectual property and all embodiments of such intellectual property, and

same, if not already in the other Party's possession, shall be promptly

delivered to the other Party (a) upon any such commencement of a bankruptcy

proceeding, upon the other Party's written request therefor, unless the

non-bankrupt Party (or a trustee on behalf of the non-bankrupt Party) elects to

continue to perform all of its obligations under this Agreement or (b) if not

delivered under (a) above, upon the rejection of this Agreement by or on behalf

of the non-bankrupt Party, upon written request therefor by the other Party.

 16.6 EFFECTS OF TERMINATION. In addition to any other remedies which may

be available at law or equity, upon termination of this Agreement the rights and

obligations of the Parties relating to confidentiality shall survive as provided

in Article 13 and indemnification shall survive for a period of three years and

the other rights and obligations of the Parties shall be as set forth in this

Section 16.6.

 (A) Upon termination of this Agreement by Amgen in accordance with

either Sections 16.2, 16.4(b) or 16.5, Amgen shall retain all rights granted to

it under this Agreement, but all of its obligations, [\*\*], shall immediately

terminate. Upon such termination, ViaCell shall also grant to Amgen full and

complete rights to manufacture the Collaboration Products and shall provide all

necessary Materials, Information and assistance (at Amgen's expense) as Amgen

may reasonably request to facilitate Amgen commencing such manufacture of the

Collaboration Products.

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 (B) Upon termination of this Agreement by ViaCell in accordance with

Section 16.4(c), ViaCell shall retain all rights granted to it under this

Agreement, but all of its obligations shall immediately terminate, except, to

the extent that the first Transition Date has already passed, [\*\*] between the

parties shall survive. Upon such termination, Amgen shall also grant to ViaCell

full and complete right to Develop and Commercialize the Collaboration Products

and shall provide all necessary Materials, Information and assistance (at

ViaCell's expense) as ViaCell may reasonably request to facilitate ViaCell

commencing Development and Commercialization of the Collaboration Products,

subject to the provisions of Section 7.3 above.

 (C) Upon termination of this Agreement for any other reason, each

party's rights and obligations hereunder shall immediately terminate, except for

those relating to confidentiality and indemnification, as described above.

 16.7 TRANSITION. After a notice of termination has been delivered pursuant

to any one of Sections 16.2 to 16.5, each Party shall, in no event in excess of

[\*\*] after the delivery date of such notice (other than with respect to

obligations which explicitly exceed such [\*\*] period), assist (and be

responsible for its own costs and expenses) in the transition of affairs as set

forth in this Article 16 in a timely, reasonable and businesslike manner. Such

assistance shall include, but not be limited to (i) making its personnel and

other resources reasonably available to the other Party, as necessary and (ii)

transferring copies of all relevant information, files or data containing

Information and all Materials to the non-terminating Party. Thereafter, unless

explicitly set forth in Sections 16.2 through 16.6, as appropriate, the Parties

shall have no further obligation to assist in such transition.

 16.8 ACCRUED RIGHTS. Termination, relinquishment or expiration of any

licenses under this Agreement or of this Agreement for any reason in accordance

with this Article 16 shall be without prejudice to any rights which shall have

accrued to the benefit of either Party or any liability incurred by either Party

prior to the effective date of such termination, relinquishment or expiration

and shall not preclude either Party from pursuing all rights and remedies it may

have hereunder or at law or in equity with respect to any breach of this

Agreement nor prejudice either Party's right to obtain performance of any

obligation.

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 ARTICLE 17

 DISPUTE RESOLUTION

 17.1 DISPUTES. The Parties recognize that disputes as to certain matters

may from time to time arise during the term of this Agreement which relate to

either Party's rights and/or obligations hereunder and which are not resolved by

the JSC. It is the objective of the Parties to establish procedures to

facilitate the resolution of disputes arising from, concerning or in any way

relating to this Agreement in an expedient manner by mutual cooperation and

without resort to litigation. To accomplish this objective, the Parties agree to

follow the procedures set forth in this Section 17.1 if and when such a dispute

arises under this Agreement (other than with respect to disputes to be resolved

in accordance with Section 2.5(b)(i)-(iv) or, as set forth in this Agreement,

disputes explicitly excluded from being resolved pursuant to this Article 17).

The Parties shall undertake good faith efforts to resolve any such dispute in

good faith. In the event the Parties shall be unable to resolve such dispute,

either Party may, by written notice to the other Party, have any dispute between

the Parties referred to their respective executive officers designated below (or

their designees or successors), for attempted resolution by good faith

negotiations within [\*\*] after such notice is received. Such designated officers

are as follows:

 For ViaCell: ViaCell's General Counsel

 For Amgen: Amgen's General Counsel

If the designated officers are not able to resolve such dispute within such

fifteen (15) day period, the dispute will be referred to the respective Chief

Executive Officers of each Party, or their Senior Vice President designee(s). If

the Chief Executive Officers (or their designees) are unable to resolve such

dispute within such further 15-day period, either Party may at any time

thereafter pursue any legal or equitable remedy available to it. Notwithstanding

the above, either Party shall be entitled at all times and without delay to seek

equitable relief.

 17.2 GOVERNING LAW; JUDICIAL RESOLUTION. Resolution of all disputes

arising out of or related to this Agreement or the performance, enforcement,

breach or termination of this Agreement and any remedies relating thereto, shall

be governed by and construed under the substantive laws of the State of New

York, as applied to agreements executed and performed entirely in the State of

New York by residents of the State of New York, without regard to conflicts of

law rules. Any dispute arising under this Agreement shall be submitted to a

state or federal court of competent jurisdiction in the State of New York.

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 ARTICLE 18

 GENERAL

 18.1 FORCE MAJEURE. Both Parties shall be excused from the performance of

their obligations under this Agreement to the extent that such performance is

prevented by Force Majeure and the nonperforming Party promptly provides notice

of the prevention to the other Party. Such excuse shall be continued so long as

the condition constituting Force Majeure continues and the nonperforming Party

uses reasonable efforts to remove the condition. When such circumstances arise,

the Parties shall discuss what, if any, modification of the terms of this

Agreement may be required in order to arrive at an equitable solution.

 18.2 NOTICES. Any notice required or permitted to be given under this

Agreement shall be in writing, shall specifically refer to this Agreement and

shall be deemed to have been sufficiently given for all purposes if mailed by

first class certified or registered mail, postage prepaid, express delivery

service or personally delivered, or if sent by facsimile, electronic

transmission confirmed. Unless otherwise notified in writing, the mailing

addresses and fax numbers for notice of the Parties shall be as described below.

 For ViaCell: ViaCell, Inc.

 131 Clarendon Street, 3rd Floor

 Boston, Massachusetts 02116

 Attn: President

 Facsimile: (617) 266-9391

 With a copy to:

 Goodwin Procter LLP

 Exchange Place

 Boston, Massachusetts 02109

 Attn: Laura C. Hodges Taylor, Esq.

 Facsimile: (617) 523-1231

 For Amgen: Amgen Inc.

 One Amgen Center Drive

 Thousand Oaks, California 91320-1799

 Facsimile: (805) 499-6058

 Attention: Vice President, Licensing

 With a copy to: Corporate Secretary

 Facsimile: (805) 499-8011

 18.3 MAINTENANCE OF RECORDS. Each Party shall keep and maintain all

records required by law or regulation with respect to Collaboration Products and

shall make copies of such records available to the other Party upon request.

 18.4 NO STRICT CONSTRUCTION. This Agreement has been prepared jointly and

shall not be strictly construed against either Party.

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treatment request. An unredacted version of this exhibit has been filed with the

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 18.5 PERFORMANCE BY AFFILIATES. Each of Amgen and ViaCell acknowledge that

obligations under this Agreement may be performed by Affiliates of Amgen and

ViaCell and that each of Amgen and ViaCell may grant its respective Affiliates a

license or sublicense to (or covenant not to sue under) Amgen Technology,

ViaCell Technology, Joint Know-How, Joint Patent Rights, Amgen Trademarks,

ViaCell Trademarks and Product Trademarks, as applicable, only to the extent and

only for so long as such license or sublicense or covenant not to sue is

necessary for such Affiliate to perform such tasks. Each of Amgen and ViaCell

guarantees performance of this Agreement by its Affiliates, notwithstanding any

assignment to Affiliates in accordance with Section 18.7 below. Wherever in this

Agreement the Parties delegate responsibility to Affiliates or local operating

entities, the Parties agree that such entities may neither make decisions

inconsistent with this Agreement, amend the terms of this Agreement nor act

contrary to its terms in any way. The Party granting a license or sublicense to

its Affiliates shall forward to the other Party a copy of each fully executed

license or sublicense agreement, within [\*\*] of the execution of each such

license or sublicense agreement.

 18.6 SUBCONTRACTING. The Parties acknowledge and agree that the following

portions of the work involved in Development, manufacture and Commercialization

of Collaboration Products may be subcontracted to a Third Party by the

responsible Party: (i) the Development Lead may contract with/establish clinical

sites, investigators and CROs pursuant to Article 3; (ii) the Parties may

subcontract to a Third Party manufacturer pursuant to Article 7; and (iii) the

Commercialization Lead may decide to enter into agreements with distributors or

sublicensees for commercial distribution of Collaboration Products; (provided

however, [\*\*]). The Party entering into such subcontract may as part of such

subcontract grant to such Third Party a license or sublicense to Amgen

Technology, ViaCell Technology, Joint Know-How, Joint Patent Rights, Amgen

Trademarks, ViaCell Trademarks and Product Trademarks, as applicable, only to

the extent and only for so long as such license or sublicense is necessary for

such Third Party to perform such tasks and subject to the provisions of Sections

10.2 and 10.3; provided however, that the responsible Party remains responsible

for the satisfactory accomplishment of such work in accordance with the terms

and conditions of this Agreement and that the subcontractor shall enter into a

written agreement binding such subcontractor to the obligations the responsible

Party has to the other Party (and containing any other provisions normal and

customary for similar types of agreements). The subcontracting Party shall

forward to the other Party a copy of each fully executed subcontracting

agreement, within [\*\*] of the execution of each such agreement.

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 18.7 ASSIGNMENT. Neither Party shall assign or transfer this Agreement or

any rights or obligations hereunder without the prior written consent of the

other Party, except that each Party is expressly permitted to: (i) make an

assignment of any or all rights under this Agreement without the other Party's

consent to Affiliates or to an entity that acquires all or substantially all of

the business of such Party, whether in a merger, consolidation, reorganization,

acquisition, sale or otherwise, provided that in any event such assignment shall

be subject to the provisions of Section 4.6 (as applicable) on a

product-by-product basis, and (ii) assign or transfer such rights or obligations

expressly permitted under Sections 4.6, 18.5 and 18.6 without the other Party's

prior written consent. This Agreement shall be binding on the successors and

assigns of the assigning Party, and the name of a Party appearing herein shall

be deemed to include the name(s) of such Party's successors and permitted

assigns to the extent necessary to carry out the intent of this Agreement. Any

assignment or attempted assignment by either Party in violation of the terms of

this Section 18.7 shall be null and void and of no legal effect. The assigning

Party shall forward to the other Party a copy of those portions of each fully

executed assignment agreement which relate to the assumption of the rights and

responsibilities of the assigning Party, within [\*\*] of the execution of such

assignment agreement.

 18.8 COUNTERPARTS. This Agreement may be executed in two (2) or more

counterparts, each of which shall be deemed an original, but all of which

together shall constitute one and the same instrument.

 18.9 SEVERABILITY. If any one or more of the provisions of this Agreement

are held to be invalid or unenforceable by any court of competent jurisdiction

from which no appeal can be or is taken, the provision shall be considered

severed from this Agreement and shall not serve to invalidate any remaining

provisions hereof. The Parties shall make a good faith effort to replace any

invalid or unenforceable provision with a valid and enforceable one such that

the objectives contemplated by the Parties when entering this Agreement, as

evidenced by the terms of this Agreement in accordance with Section 18.18, may

be realized.

 18.10 HEADINGS. The headings for each Article and Section in this

Agreement have been inserted for convenience of reference only and are not

intended to limit or expand on the meaning of the language contained in the

particular Article or Section. Unless otherwise specified, (a) references in

this Agreement to any Article, Section, Exhibit or Schedule shall mean

references to such Article, Section, Exhibit or Schedule of this Agreement, (b)

references in any Section to any clause are references to such clause of such

Section, and (c) references to any agreement, instrument or other document in

this Agreement refer to such agreement, instrument or other document as

originally executed or, if subsequently varied, replaced or supplemented from

time-to-time, as so varied, replaced or supplemented and in effect at the

relevant time of reference thereto.

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 18.11 FURTHER ACTIONS. Each Party agrees to execute, acknowledge and

deliver such further instruments and to do all such other acts as may be

necessary or appropriate in order to carry out the purposes and intent of the

Agreement.

 18.12 INDEPENDENT CONTRACTORS. The relationship between ViaCell and Amgen

created by this Agreement is solely that of independent contractors. This

Agreement does not create any agency, distributorship, employee-employer,

partnership, joint venture or similar business relationship between the Parties.

Neither Party is a legal representative of the other Party, and neither Party

can assume or create any obligation, representation, warranty or guarantee,

express or implied, on behalf of the other Party for any purpose whatsoever.

Each Party shall use its own discretion and shall have complete and

authoritative control over its employees and the details of performing its

obligations under this Agreement.

 18.13 NO BENEFIT OF THIRD PARTIES. The representations, warranties,

covenants and agreements set forth in this Agreement are for the sole benefit of

the Parties hereto and their successors and permitted assigns, and they shall

not be construed as conferring any rights on any Third Parties.

 18.14 USE OF NAMES, LOGOS OR SYMBOLS. Except as otherwise explicitly

authorized under this Agreement, no Party hereto shall use, and no rights are

granted in or to, the names or trademarks (including the names "Amgen" and

"ViaCell"), physical likeness, employee names or owner symbol of any other Party

for any purpose (including, without limitation, private or public securities

placements) without the prior written consent of the affected Party, such

consent not to be unreasonably withheld or delayed so long as such use of name

is limited to objective statement of fact rather than for endorsement purposes.

 18.15 NO WAIVER. Any delay in enforcing a Party's rights under this

Agreement or any waiver as to a particular default or other matter shall not

constitute a waiver of such Party's rights to the future enforcement of its

rights under this Agreement, except with respect to an express written and

signed waiver relating to a particular matter for a particular period of time.

 18.16 OFFSET. Either Party shall be entitled to offset, against any

payments due and payable to the other Party hereunder, all such amounts due and

payable hereunder but not yet paid by the other Party to the Party seeking such

offset. Prior to applying an offset under this Section 18.16, the Party seeking

such offset shall first give the other Party written notice of such due and

payable amounts and shall request the other Party to pay all such due and

payable amounts within [\*\*] from the date of such notice.

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 18.17 EXPORT REQUIREMENTS. It is understood and acknowledged that the

transfer of certain commodities and technical data is subject to United States

laws and regulations controlling the export of such commodities and technical

data, including all Export Administration Regulations of the United States

Department of Commerce. Each Party hereby agrees and by entering into this

Agreement gives written assurance that it shall comply with all United States

laws and regulations controlling the export of commodities and technical data

within Information and Materials, that it will be solely responsible for any

violation of any such laws and regulations by itself, its Affiliates or its

sublicensees, and that it will Indemnify, defend and hold the other Party

harmless from any liability in the event of any legal action of any nature

occasioned by such violation, pursuant to Section 15.1 (in the case of Amgen) or

Section 15.2 (in the case of ViaCell).

 18.18 ENTIRE AGREEMENT; AMENDMENT. This Agreement (including all Exhibits

and Schedules) set forth the complete, final and exclusive agreement and all the

covenants, promises, agreements, warranties, representations, conditions and

understandings between the Parties hereto and supersedes and terminates all

prior agreements and understandings between the Parties; on the Effective Date

of this Agreement, the License Agreement dated April 9, 2002 (Amgen Reference

No. 200203067) and all Material Transfer Agreements between the Parties are

hereby superseded, and shall be subject to the terms of, this Agreement. There

are no covenants, promises, agreements, warranties, representations, conditions

or understandings, either oral or written, between the Parties other than as are

set forth herein and therein. This Agreement may only be modified or

supplemented in a writing expressly stated for such purpose and signed by an

authorized officer of each Party (i.e., it may not be modified by any purchase

order, change order, acknowledgment, order acceptance, standard terms of sale,

invoice or the like); except that the JSC may amend or update the Program Plan

as expressly permitted hereby.

 18.19 EXHIBITS AND SCHEDULES. All Exhibits and Schedules referenced herein

and attached hereto are incorporated in this Agreement by reference. In case of

any discrepancies between the language incorporated from the Exhibits and

Schedules and the terms of the Sections, the terms of the Sections shall

prevail; provided however, where Sections of the Agreement make explicit

reference to a substantive matter contained in an Exhibit or Schedule, or with

respect to definitions set forth in the Exhibits or Schedules, the substantive

matter or definitions contained in such Exhibit and Schedules shall prevail.

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 IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate

originals by their duly authorized representatives as of the Effective Date.

AMGEN INC. VIACELL, INC.

By: /s/ Richard A. Namula By: /s/ Marc Beer

Print Name: Richard A. Namula Print Name: Marc D. Beer

Title: Executive Vice President Title: Chief Executive Officer

 Finance Strategy and

 Communications, and

 Chief Financial Officer

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 EXHIBIT A

 AMGEN PATENT RIGHTS AS OF THE EFFECTIVE DATE

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[\*\*] Portions of this exhibit have been omitted pursuant to a confidential

treatment request. An unredacted version of this exhibit has been filed with the

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 EXHIBIT B

 ALLOWABLE COLLABORATION EXPENDITURES

 TO THE OPERATING PROFIT OR LOSS ACCOUNT

This Exhibit B outlines the understanding of the Parties as to how revenues and

expenses will be accounted for after the relevant Transition Date for the

purposes of generating budgets for Development, manufacturing and

Commercialization of each Collaboration Product and for settling accounts

between the Parties.

I. CALCULATION OF OPERATING PROFIT OR LOSS

 A. The Operating Profit or Loss shall be calculated by subtracting

 from the amount of Net Sales of each Collaboration Product the Allowed

 Expenditures (as defined below) for such Collaboration Product.

 B. In each category of Allowed Expenditures, each Party shall be

 entitled to include the following costs actually incurred, to the extent

 necessary to perform the defined activities within each category of

 Allowed Expenditures: (a) all actual Third Party costs and expenses

 incurred in performing such defined activities, as recognized in

 accordance with GAAP; (b) the Internal FTE Cost of performing such defined

 activities; and (c) the cost of materials used in performing such defined

 activities, provided that costs are not covered in (a) or (b). In any

 event, each Party shall properly account in its books and records for how

 such costs were incurred.

 C. Except as otherwise explicitly set forth in the Agreement or as

 mutually agreed by the Parties prior to incurring a cost or expense, the

 Allowed Expenditures shall include solely costs and expenses incurred

 after the Transition Date for each Collaboration Product.

 D. The Parties shall not charge or include any cost or expense more

 than once or in the calculation of more than one category of Allowed

 Expenditures.

II. CALCULATION OF ALLOWED EXPENSES - "Allowed Expenditures" shall mean

collectively, the Cost of Goods Manufactured, Development Expenditures,

Regulatory Expenditures, Commercial Expenditures and Other Allowed Expenditures,

and shall be calculated in accordance with the this Exhibit B.

 A. "Development Expenditures" shall mean all costs and expenses

 incurred in study design of clinical trials and protocols, contracting

 with clinical sites, recruiting and enrolling patients to participate in

 the clinical trials, collecting and analyzing the clinical trial data,

 incorporating the clinical trial data into appropriate regulatory filings,

[\*\*] Portions of this exhibit have been omitted pursuant to a confidential

treatment request. An unredacted version of this exhibit has been filed with the

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 and otherwise performing clinical trials, but in any event excluding all

 Cost of Goods Manufactured, Regulatory Expenditures, Commercial

 Expenditures and Other Allowed Expenditures.

 B. "Cost of Goods Manufactured" shall mean

 (i) For Clinical Collaboration Products and Clinical

 Contributed Products, the sum of (a) any royalties or other payments

 payable to a Third Party for the manufacturing of a Clinical

 Collaboration Product and Clinical Contributed Product and (b) the

 Process Development/Manufacturing Expenditures; and

 (ii) For Commercial Collaboration Products and Commercial

 Contributed Products, the sum of (a) any royalties or other payments

 payable to a Third Party for the manufacturing or sale of a

 Commercial Collaboration Product and Commercial Contributed Product

 and (b) Standard Costs; and

 (iii) In any event, excluding all Development Expenditures,

 Regulatory Expenditures, Commercial Expenditures and Other Allowed

 Expenditures;

 provided, that Cost of Goods Manufactured may be charged by the

 Party that incurred such costs [\*\*] Expenses incurred for

 manufacture of Commercial Collaboration Products that are [\*\*].

 Expenses incurred for manufacture of Commercial Collaboration

 Products that are [\*\*]. The per-unit cost of Commercial

 Collaboration Products will be calculated pursuant to the terms of

 this Exhibit B and Section 6.4(d) of the Agreement.

 C. "Regulatory Expenditures" shall mean all costs and expenses

 incurred in preparing for and attending regulatory meetings,

 communications, filings and approvals (including any applicable

 governmental price and reimbursement approvals), licenses, registrations,

 or authorizations of any Regulatory Authority necessary for the

 manufacture, use, storage, import, export, transport, Promotion, marketing

 and sale of a Collaboration Product in a country. In any event,

 "Regulatory Expenditures" excludes Cost of Goods Manufactured, Development

 Expenditures, Commercial Expenditures and Other Allowed Expenditures

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 D. "Commercial Expenditures" shall mean all costs and expenses

 incurred in Advertising and Promotion, Marketing, Market Research, Medical

 Affairs and Detailing. [\*\*]. In any event, "Commercial Expenditures"

 excludes Cost of Goods Manufactured, Development Expenditures, Regulatory

 Expenditures and Other Allowed Expenditures.

 E. "Other Allowed Expenditures" shall mean License Fees, patent and

 trademark prosecution and defense expenses allowed under Article 10 of the

 Agreement, all costs and expenses incurred in performing Recalls described

 in Section 5.10 of the Agreement and transition expenditures permitted

 under Section 4.5 of the Agreement. In any event, "Other Allowed

 Expenditures" excludes Cost of Goods Manufactured, Development

 Expenditures, Regulatory Expenditures and Commercial Expenditures.

III. PRINCIPLES FOR ALLOCATING [\*\*] COST AMONG MULTIPLE PRODUCTS - For the

purposes of allocating the Internal FTE Cost incurred by a Party [\*\*], the

following shall apply in the event [\*\*]. The [\*\*] Internal FTE Cost, the [\*\*]

Internal FTE Cost and the [\*\*] Internal FTE Cost (i.e., [\*\*]).

IV. OTHER DEFINITIONS.

 A. "Advertising and Promotion" shall mean activities necessary for

 (i) the marketing, advertising and Promotion of Collaboration Products

 (including, without limitation, educational expenses, radio, television or

 journal advertising, advocate development programs and symposia, and

 Promotional Materials); (ii) providing free samples of Collaboration

 Product; and (iii) training and communication materials for the

 Collaboration Products.

 B. "Clinical Collaboration Products" shall mean batches of

 Collaboration Product other than Commercial Collaboration Products.

 C. "Clinical Contributed Products" shall mean batches of Contributed

 Product other than Commercial Contributed Products.

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 D. "Commercial Collaboration Products" shall mean batches of

 Collaboration Products produced in a facility commercially licensed for

 production of such Collaboration Products, the first batches of which

 shall be the conformance lots.

 E. "Commercial Contributed Products" shall mean batches of

 Contributed Products produced in a facility commercially licensed for

 production of such Contributed Products, the first batches of which are

 expected to be the conformance lots. In all events, SCF shall be deemed a

 Commercial Contributed Product.

 F. "FTE" shall mean the amount of labor produced by a full-time

 equivalent person in one year (consisting of at least [\*\*] hours per year)

 performing scientific, technical or management activities. Each party

 shall identify, in the Program Plan, the number and function of FTEs for

 the collaboration, [\*\*].

 G. "FTE Costs" shall mean either the external or internal cost of

 providing a [\*\*] FTE [\*\*] to support the collaboration:

 (i) External FTE Costs will be charged to the Operating Profit

 or Loss account based on [\*\*]

 (ii) Internal FTE Costs will be charged to the Operating

 Profit or Loss account based on the number of [\*\*] FTEs performing

 defined activities in accordance with recorded time charges. The

 Parties have agreed to bill these FTEs to the Operating Profit or

 Loss account [\*\*] which shall be deemed to [\*\*]. This rate will be

 [\*\*], based on [\*\*]. Each party shall document this [\*\*] with a copy

 of the relevant portion of the minutes for their respective [\*\*].

 H. "License Fees" shall mean all upfront payments, milestone

 payments, license fees, royalties or other payments, payable to any Third

 Party under any Third Party license agreement for which payments may be

 incorporated pursuant to Section 7.2(e)(ii) of the Agreement.

 I. "Marketing" shall mean marketing communications, sales force

 training, managing corporate accounts, maintaining relationships with

 managed care providers,

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 providing product and reimbursement support, pricing, conducting

 compassionate use programs for Collaboration Products.

 J. "Market Research" shall mean all qualitative and quantitative

 market research to assess the Collaboration Product's market potential and

 competitive landscape given an expected product profile with specific

 attributes.

 K. "Medical Affairs" shall mean planning, preparing and conducting

 pharmacoeconomics studies, outcomes studies, extramural studies, Phase 3B

 studies and Post Marketing Approval Studies.

 L. "Process Development/Manufacturing Expenditures" shall mean all

 costs and expenses incurred in performing the following activities solely

 relating to production of Clinical Collaboration Products or Clinical

 Contributed Products, [\*\*].

 M. "Standard Costs" shall mean the following costs and expenses

 incurred by the manufacturer of Contributed Products and/or Collaboration

 Products (as applicable), [\*\*].

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 EXHIBIT C

 COVERED ENTITIES

 [\*\*]

[\*\*] Portions of this exhibit have been omitted pursuant to a confidential

treatment request. An unredacted version of this exhibit has been filed with the

Commission.

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 EXHIBIT D

 ADDITIONAL CONTRIBUTED PRODUCTS

 None.

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treatment request. An unredacted version of this exhibit has been filed with the

Commission.

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 EXHIBIT E

 FLT3 LIGAND AMINO ACID SEQUENCE

Thr Gln Asp Cys Ser Phe Gln His Ser Pro Ile Ser Ser Asp Phe Ala Val Lys Ile Arg

 5 10 15 20

Glu Leu Ser Asp Tyr Leu Leu Gln Asp Tyr Pro Val Thr Val Ala Ser Asn Leu Gln Asp

 25 30 35 40

Glu Glu Leu Cys Gly Gly Leu Trp Arg Leu Val Leu Ala Gln Arg Trp Met Glu Arg Leu

 45 50 55 60

Lys Thr Val Ala Gly Ser Lys Met Gln Gly Leu Leu Glu Arg Val Asn Thr Glu Ile His

 65 70 75 80

Phe Val Thr Lys Cys Ala Phe Gln Pro Pro Pro Ser Cys Leu Arg Phe Val Gln Thr Asn

 85 90 95 100

Ile Ser Arg Leu Leu Gln Glu Thr Ser Glu Gln Leu Val Ala Leu Lys Pro Trp Ile Thr

 105 110 115 120

Arg Gln Asn Phe Ser Arg Cys Leu Glu Leu Gln Cys Gln Pro Asp Ser Ser Thr Leu Pro

 125 130 135 140

Pro Pro Trp Ser Pro Arg Pro Leu Glu Ala Thr Ala Pro

 145 150

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 EXHIBIT F

 SCF AMINO ACID SEQUENCE

 1 10

 E G I C R N R V T N

 20 30

N V K D V T K L V A N L P K D Y M I T L

 40 50

K Y V P G M D V L P S H C W I S E M V V

 60 70

Q L S D S L T D L L D K F S N I S E G L

 80 90

S N Y S I I D K L V N I V D D L V E C V

 100 110

K E N S S K D L K K S F K S P E P R L F

 120 130

T P E E F F R I F N R S I D A F K D F V

 140 150

V A S E T S D C V V S S T L S P E K D S

 160

R V S V T K P F M L P P V A A

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 EXHIBIT G

 VIACELL PATENT RIGHTS

 [VIACELL TO UPDATE BASED ON RECENT ACQUISITION]

 [\*\*]

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treatment request. An unredacted version of this exhibit has been filed with the

Commission.

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 EXHIBIT H

 VIACELL TRADEMARKS

 Trademark Application Registration

Status Number: Name/Description Date Date Registered Use of Mark: Owner

Pending EC ViaCell 9/13/2000 Cellular medicines for the treatment ViaCell

 1853571 of human disease, namely, cancer,

 (application) genetic disease, neurologial

 diseases, infectious diseases, organ

 transplant tolerance and autoimmune

 diseases; in Class 5.

Pending US ViaCell 4/12/2000 Cellular medicines for the treatment ViaCell

 76/024540 of human disease, namely, cancer,

 (application) genetic disease, neurologial

 diseases, infectious diseases, organ

 transplant tolerance and autoimmune

 diseases; in Class 5.

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treatment request. An unredacted version of this exhibit has been filed with the

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