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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
the Securities and Exchange Act of 1934

Date of Report (date of earliest event reported):
September 17, 2007

NILE THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**333-55166**	**88-0363465**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2850 Telegraph Avenue, Suite #310 **Berkeley, CA** (Address of principal executive offices)	**94705** (Zip Code)

Registrant's telephone number, including area code:
(510) 281-7700

(Former name or former address, if changed since last report)
SMI Products, Inc.
122 Ocean Park Blvd.
Suite 307
Santa Monica, California 90405

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

This current report on Form 8-K (this Report) contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 (the Securities Act) and Section 21E of the Securities Exchange Act of 1934 (Exchange Act). The forward-looking statements are only predictions and provide our current expectations or forecasts of future events and financial performance and may be identified by the use of forward-looking terminology, including the terms "believes," "estimates," "anticipates," "expects," "plans," "intends," "may," "will" or "should" or, in each case, their negative, or other variations or comparable terminology, though the absence of these words does not necessarily mean that a statement is not forward-looking. Forward-looking statements include all matters that are not historical facts and include, without limitation, statements concerning our business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, our research and development programs and planning for and timing of any clinical trials, the possibility, timing and outcome of submitting regulatory filings for our products under development, potential investigational new drug applications, or INDs, and new drug applications, or NDAs, research and development of particular drug products, the development of financial, clinical, manufacturing and marketing plans related to the potential approval and commercialization of our drug products, and the period of time for which our existing resources will enable us to fund our operations.

We intend that all forward-looking statements be subject to the safe-harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are subject to many risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Examples of the risks and uncertainties include, but are not limited to:

- the risk that we may not successfully develop and market our products, and even if we do, we may not become profitable;
- risks relating to the progress of our research and development;
- risks relating to significant, time-consuming and costly research and development efforts, including pre-clinical studies, clinical trials and testing, and the risk that clinical trials may be delayed, halted or fail;
- risks relating to the rigorous regulatory approval process required for any products that we may develop independently, with our development partners or in connection with our collaboration arrangements;
- the risk that changes in the national or international political and regulatory environment may make it more difficult to gain U.S. Food and Drug Administration, (FDA) or other regulatory approval of our drug product candidates;
- risks that the FDA or other regulatory authorities may not accept any applications we file;
- risks that the FDA or other regulatory authorities may withhold or delay consideration of any applications that we file or limit such applications to particular indications or apply other label limitations;
- risks that, after acceptance and review of applications that we file, the FDA or other regulatory authorities will not approve the marketing and sale of our drug product candidates;
- risks relating to our drug manufacturing operations, including those of our third-party suppliers and contract manufacturers;

- risks relating to the ability of our development partners and third-party suppliers of materials, drug substance and related components to provide us with adequate supplies and expertise to support manufacture of drug product for initiation and completion of our clinical studies;

- risks relating to the transfer of our manufacturing technology to third-party contract manufacturers;

- the risk that recurring losses, negative cash flows and the inability to raise additional capital could threaten our ability to continue as a going concern;

- other risks and uncertainties detailed in "Risk Factors" and in the documents incorporated by reference in this report.

Pharmaceutical and biotechnology companies have suffered significant setbacks in advanced clinical trials, even after obtaining promising earlier trial results. Data obtained from such clinical trials are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. Except to the extent required by applicable laws or rules, we do not undertake to update any forward-looking statements or to publicly announce revisions to any of our forward-looking statements, whether resulting from new information, future events or otherwise.

ITEM 2.01

1. CHANGES IN CONTROL OF REGISTRANT

The disclosures set forth under Item 2 are incorporated by reference into this Item 1.

2. COMPLETION OF ACQUISITION OR DISPOSITION OF ASSETS

Closing of Merger

Pursuant to the merger agreement dated August 15, 2007 (Merger Agreement), between SMI Products, Inc. (SMI), Nile Merger Sub., Inc., a Delaware corporation and wholly-owned subsidiary of SMI (Nile Merger Sub), and Nile Therapeutics, Inc., a Delaware corporation (Old Nile), on September 17, 2007, Nile Merger Sub merged with and into Old Nile, with Old Nile remaining as the surviving entity and a wholly-owned operating subsidiary of SMI. SMI's entry into the Merger Agreement was disclosed on SMI's Current Report on Form 8-K filed with the SEC on August 17, 2007. On September 17, 2007, SMI filed a Certificate of Ownership with the Secretary of State of the State of Delaware pursuant to which Old Nile, SMI's wholly-owned subsidiary by virtue of the Merger, merged with and into SMI with SMI remaining as the surviving corporation to that merger. In connection with that short-form merger, and as set forth in the Certificate of Ownership, we changed our corporate name to "Nile Therapeutics, Inc." (referred to throughout this Report as "Nile"). The Certificate of Ownership is filed with the Secretary of State of the State of Delaware. These two transactions are referred to throughout this Report as the "Merger." Unless the context otherwise requires, hereafter in this report the terms the "Company," "we," "us," or "our" refer to Nile, after giving effect to the Merger.

Each share of common stock, par value $0.001 per share of Old Nile (Old Nile Common Stock), that was outstanding immediately prior to the Merger was cancelled or exchanged for 2.758838 shares of SMI's common stock, par value $0.001 per share (the SMI Common Stock), and one share of Old Nile Common Stock was issued to SMI. Simultaneously, SMI issued to the former holders of Old Nile Common Stock in exchange for their shares of Old Nile Common Stock, an aggregate of 22,849,716 shares of SMI Common Stock, making Old Nile a wholly-owned subsidiary of SMI. In addition, all securities convertible into or exercisable for shares of Old Nile Common Stock outstanding immediately prior to the Merger were cancelled, and the holders thereof received similar securities for the purchase of an aggregate of 3,572,350 shares of SMI Common Stock. In addition to the 755,100 shares of SMI Common Stock that were issued and outstanding prior to the effective time of the Merger, we also issued 494,900 shares of SMI Common Stock to Fountainhead Capital Partners Limited, or Fountainhead Capital, upon the conversion of $168,573 of convertible promissory notes and accrued interest.

At the effective time of the Merger, our board of directors was reconstituted by the resignation of Mr. Geoffrey Alison from his role as our sole director and the appointment of Mr. Peter Strumph, Mr. Peter Kash, Mr. Joshua Kazam, Mr. David Tanen, and Dr. Paul Mieyal as directors (all of whom were directors of Old Nile immediately prior to and after the Merger). Our executive management team also was reconstituted following the resignation of Mr. Alison as SMI's president, and new officers were appointed in place of our former officers. See "*Directors and Executive Officers, Promoters and Control Persons.*"

The former holders of Old Nile Common Stock now beneficially own approximately 95% of the outstanding shares of our capital stock. Accordingly, the Merger represents a change in control. As of the date of this report, there are 24,099,716 shares of SMI Common Stock outstanding. For accounting purposes, the Merger has been accounted for as an acquisition of SMI and a recapitalization of Old Nile, with Old Nile as the accounting acquirer (legal acquiree) and SMI as the accounting acquiree (legal acquiror). Unless the context otherwise requires, we refer to the SMI Common Stock following the Merger as Nile Common Stock.

Recent Financings

On March 28, 2006, Old Nile issued to certain qualified investors 6% Convertible Promissory Notes in the aggregate principal amount of approximately $4,000,000 (the 6% Notes). The 6% Notes provided that upon the closing of any equity financing in excess of $5,000,000 (a Qualified Financing), the 6% Notes would automatically convert into the same securities issued by Old Nile in the Qualified Financing (Conversion Shares), in an amount determined by dividing the principal amount of the 6% Notes, and all accrued interest thereon, by 90% of the price per share sold in the Offering (as such term is defined below) (the Offering Price). In addition, upon conversion, Old Nile agreed to issue to the holders of the 6% Notes five-year warrants (Conversion Warrants), to purchase a number of shares of Nile Common Stock equal to 10% of the Conversion Shares at an exercise price equal to the Offering Price.

On July 24, 2007, Old Nile issued to Iota Investors, LLC an 8% Promissory Note (the 8% Promissory Note) in the aggregate principal amount of $1,500,000, which has been repaid in full, together with a premium of $120,000. In addition, Old Nile paid the investor $30,000 (2%) out of the proceeds of that financing.

As a condition to the closing of the Merger, on September 11, 2007, Old Nile completed a financing whereby it received gross proceeds of $19,974,747 through the sale of 2,522,064 shares of Old Nile Common Stock in a private placement to certain qualified investors (the Offering). Contemporaneously with the Offering, the 6% Notes converted into 610,433 Conversion Shares and the 6% Noteholders received Conversion Warrants to purchase an aggregate of 61,028 shares of Old Nile Common Stock.

The issuance and sale of the promissory notes and other instruments described above were made pursuant to privately negotiated transactions that did not involve a public offering of securities and, accordingly, we believe that these transactions were exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof and the rules promulgated thereunder. In addition, we believe that the 8% Promissory Note is commercial paper and is exempt from the registration requirements of the Securities Act under Section 3(a)3 thereof. Each of the above-referenced investors represented to us that they were "accredited investors" (as defined by Rule 501 under the Securities Act) and were acquiring the shares for investment and not distribution, that they could bear the risk of loss of the investment and could hold the securities for an indefinite period of time. The investors received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration or an available exemption from such registration. All of the foregoing securities are deemed restricted securities for purposes of the Securities Act.

The issuance of the SMI Common Stock to the shareholders of Old Nile in the Merger was exempt from registration under the Securities Act pursuant to Section 4(2) thereof. We have made this determination based on the representations of the Old Nile shareholders and investors which included, in pertinent part, that such persons were either "accredited investors" or were acting through a "purchaser representative," each within the meaning of Rule 501 of Regulation D promulgated under the Securities Act, that such persons were acquiring the shares of SMI Common Stock issued to them pursuant to the Merger, for investment purposes for their own respective accounts and not as nominees or agents, and not with a view to the resale or distribution thereof in violation of the Securities Act, and that each person understood that the shares of the SMI Common Stock issued in the Merger may not be sold or otherwise disposed of without registration under the Securities Act or an applicable exemption therefrom.

INFORMATION REQUIRED PURSUANT TO FORM 10-SB

See the "Glossary of Terms" included in this Report for definitions of certain technical terms used in this report that are commonly used in the pharmaceutical and biotechnology industries.

PART I

1. DESCRIPTION OF BUSINESS

Business of SMI

SMI was incorporated in the State of Nevada on June 17, 1996. On October 16, 2006, SMI changed its domicile to the State of Delaware. From inception through August 11, 2006, SMI was a development stage company in the business of internet real estate mortgage services. From and after August 11, 2006, SMI ceased its prior business. Upon completion of the Merger, we adopted Nile's business plan.

Employees

SMI had no employees at the time of the Merger.

Business of Nile

Organization and Corporate History

Old Nile was incorporated in the State of Delaware on August 1, 2005, under the name Nile Pharmaceuticals, Inc. Old Nile changed its name to Nile Therapeutics, Inc. on January 18, 2007.

Business in General

Our company develops and commercializes innovative products for the treatment of cardiovascular and metabolic disease. Our lead compound is CD-NP, a chimeric natriuretic peptide in Phase I clinical studies for the treatment of heart failure. We are also developing 2NTX-99, a pre-clinical small molecule, anti-atherothrombotic agent with nitric oxide-donating properties.

CD-NP

CD-NP is a rationally-designed synthetic peptide developed by researchers at The Mayo Foundation for Medical Education and Research, or Mayo, to incorporate the optimal components of naturally occurring natriuretic peptides. CD-NP is a selective NPR_B agonist that has shown potent renal enhancement and cardiac unloading properties *in vivo.* Importantly, however, CD-NP appears to do so with minimal hypotensive effects as compared with competitive products. In multiple preclinical studies, including a large animal model of congestive heart failure, CD-NP demonstrated potent therapeutic activity compared to Natrecor®, a natriuretic peptide currently marketed by Scios Inc. (a Johnson & Johnson company) to treat acute heart failure, including producing less hypotension then Natrecor® and improving fluid unloading at equimolar doses.

We recently completed a Phase Ia study in healthy volunteers to examine the safety and pharmacodynamic effects of various doses of CD-NP. The study placed particular emphasis on the effects of CD-NP on blood pressure and renal function, and identifying a dose for use in later stage studies. Data from this first in-human study confirmed several preclinical findings, including that CD-NP potently activated its target receptor in humans, preserved renal function and caused increases in natriuresis (sodium excretion) and diuresis (urine excretion) at doses associated with a minimal effect on mean arterial pressure. Two additional comprehensive Phase Ib studies to assess the safety and pharmacodynamic profile of CD-NP in heart failure patients are planned for initiation in the fourth quarter of 2007.

2NTX-99

The second molecule in our pipeline is 2NTX-99, a novel small molecule that has been shown *in vivo* and *in vitro* to inhibit the synthesis and action of thromboxane (TXA_2), enhance the production of prostacyclin (PGI_2) and supply pharmacological amounts of nitric oxide (NO) to the vasculature. TXA_2, produced by activated platelets, is believed to have prothrombotic properties, stimulating activation of new platelets as well as increasing platelet aggregation. TXA_2 is implicated in a number of inflammatory and thrombotic conditions, particularly in diabetic populations. PGI_2 reverses many of these inflammatory and thrombotic processes, and acts chiefly to prevent platelet formation and clumping involved in blood clotting, and is also an effective vasodilator. NO-donation is hypothesized to act synergistically with PGI_2 *in vivo* to relax the vasculature and protect against atherosclerotic conditions.

We believe that the unique activity profile of 2NTX-99 has potential utility in a range of atherosclerotic, thrombotic, and microvascular diseases, including intermittent claudication and diabetic nephropathy. We intend to initiate pre-clinical toxicology and manufacturing activities for 2NTX-99 in the third quarter of 2007, and we plan to file an IND and enter human testing by the end of 2009.

Intellectual Property

Our goal is to obtain, maintain and enforce patent protection for our products, formulations, processes, methods and other proprietary technologies, preserve our trade secrets, and operate without infringing on the proprietary rights of other parties, both in the U.S. and abroad. Our policy is to actively seek to obtain, where appropriate, the broadest intellectual property protection possible for our current product candidates and any future product candidates, proprietary information and proprietary technology through a combination of contractual arrangements and patents, both in the U.S. and abroad. However, even patent protection may not always afford us with complete protection against competitors who seek to circumvent our patents. If we fail to adequately protect or enforce our intellectual property rights or secure rights to patents of others, the value of our intellectual property rights would diminish. See *"Risk Factors - If we fail to protect or enforce our intellectual property rights adequately or secure rights to patents of others, the value of our intellectual property rights would diminish."*

We will continue to depend upon the skills, knowledge and experience of our scientific and technical personnel, as well as that of our advisors, consultants and other contractors, none of which is patentable. To help protect our proprietary know-how, which is not patentable, and for inventions for which patents may be difficult to enforce, we currently rely and will in the future rely on trade secret protection and confidentiality agreements to protect our interests. To this end, we require all of our employees, consultants, advisors and other contractors to enter into confidentiality agreements that prohibit the disclosure of confidential information and, where applicable, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business. See "*Risk Factors - If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer."*

License Agreements

On January 20, 2006, we entered into an exclusive, worldwide, royalty-bearing license agreement, or the Mayo License Agreement, with Mayo for the rights to issued patents, patent applications and know-how relating to CD-NP for all therapeutic uses. We also have the rights to improvements to CD-NP that arise out of the laboratory of Dr. John Burnett, the inventor of CD-NP, until January 20, 2009. We intend to continue to expand our patent portfolio by filing to protect any additional patents covering expanded uses for this technology.

Under the terms of the Mayo License Agreement, Old Nile made an up-front cash payment to Mayo and reimbursed it for past patent expenses. Old Nile also issued 500,000 shares of Old Nile Common Stock to Mayo. On August 31, 2007, Mayo transferred 200,000 shares to Miami Research Heart Institute (Miami Heart). Mayo's shares converted into 827,651 shares of Nile Common Stock and Miami Heart's shares converted into 551,767 shares of Nile Common Stock at the effective time of the Merger. Additionally, Mayo will receive performance-based cash payments upon successful completion of clinical and regulatory milestones relating to CD-NP. We will make the first milestone payment to Mayo when the first patient is dosed in the first Company-sponsored Phase II clinical trial of CD-NP. We also have agreed to pay Mayo substantial milestone payments upon the receipt of regulatory approval for each additional indication of CD-NP as well as for additional compounds or analogues contained in the intellectual property. Pursuant to the Mayo License Agreement, we must also pay Mayo an annual maintenance fee and a percentage of net sales of licensed products. To the extent we enter into a sublicensing agreement relating to CD-NP, we will be responsible for each sub-licensee's adherence to the terms of the Mayo License Agreement and a breach of a sub-license agreement by a sub-licensee will constitute a breach of the Mayo License Agreement by us. Under the terms of the Mayo License Agreement, Dr. Burnett has agreed to serve as chairman of our Scientific Advisory Board. In addition, we will pay Mayo $50,000 per year for the consulting services of Dr. Burnett. The Mayo License Agreement also contains other customary clauses and terms as are common in similar agreements in the industry.

In addition to the potential milestone payments discussed above, the Mayo License Agreement requires us to issue shares of Nile Common Stock to Mayo for an equivalent dollar amount of grant funding by Mayo of Dr. Burnett's CD-NP development program, above a threshold amount of grant funding not to exceed a specified amount of grant dollars. As of the date hereof, Mayo has funded a substantial portion of this amount of grant funding for CD-NP. Accordingly, following the closing of the Offering, Old Nile issued Mayo 23,009 shares of Old Nile Common Stock, which converted into 63,478 shares at the Merger. In addition, to the extent that Mayo funds up to an additional $92,765 in grant money, we are obligated to issue additional shares to Mayo contemporaneously with the closing of the first equity financing thereafter. See "*Risk Factors - If requirements under our license agreements are not met, we could suffer significant harm, including rights to our products*."

On August 6, 2007, Old Nile entered into an exclusive, worldwide, royalty-bearing license agreement, or the 2NTX-99 License Agreement, with Dr. Cesare Casagrande for the rights to the intellectual property and know-how relating to 2NTX-99, and all of its human therapeutic or veterinary uses. The intellectual property portfolio for 2NTX-99 includes an issued U.S. patent and a pending European Patent Cooperative Treaty submission relating to its composition of matter, multiple methods of manufacturing, and method of use in treating a variety of atheroclerotic-thrombotic pathological conditions.

Under the 2NTX-99 License Agreement, Old Nile made an up-front cash payment to Dr. Casagrande and reimbursed him for past patent expenses. Old Nile also issued to Dr. Casagrande 126,904 shares of Old Nile Common Stock, which converted into 350,107 shares of Nile Common Stock at the effective time of the Merger. Additionally, the agreement provides for cumulative performance-based milestone payments to Dr. Casagrande upon completion of clinical and regulatory milestones relating to 2NTX-99 in the U.S., Europe and Japan. We will also be required to make certain milestones payments to Dr. Casagrande upon regulatory approval for each additional indication of 2NTX-99 and upon achieving certain annual sales milestones. The first milestone payment will be due when the first patient is dosed in the first Company sponsored Phase I clinical trial of 2NTX-99 in the U.S. or the European Union. We also expect to be required to make quarterly royalty payments to Dr. Casagrande equal to a percentage of net sales of licensed products by us and our sub-licensees. The 2NTX-99 License Agreement also contains other customary clauses and terms as are common in similar agreements in the industry. See "*Risk Factors - If requirements under our license agreements are not met, we could suffer significant harm, including rights to our products.*"

Competition

We face significant competition from companies with substantial financial, technical and marketing resources, which could limit our future revenues from sales of CD-NP and 2NTX-99. Our success will depend, in part, upon our ability to achieve market share at the expense of existing established and future products in the relevant target markets. Existing and future products, therapies, technologies, technological innovations, and delivery systems will likely compete directly with our products.

The development and commercialization for new products to treat cardiovascular and metabolic diseases is highly competitive, and there will be considerable competition from major pharmaceutical, biotechnology, and other companies. With respect to CD-NP, many therapeutic options are available for patients with acute decompensated heart failure including, without limitation, nitroglycerine, inotopes, diuretics, as well as Natrecor™. Some of our existing competitors include, without limitation Scios Inc. (a Johnson & Johnson company), Astellas Pharma, PDL Biopharma, Zealand Pharma, and NovaCardia.

With respect to 2NTX-99, many therapeutic options are available for patients with atherosclerotic, thrombotic, and microvascular diseases including, without limitation, antiplatlet agents (aspirin and clopidogrel), angiotensin converting enzyme (ACE) inhibitors, angiotensin receptor blockers (ARBs), beta-blockers, pentoxifylline and cilostazol. Some of our existing competitors include, without limitation, Brystol Myers Squibb Inc., Eli Lilly and Company, CardioVascular BioTherapeutics, Inc., and Keryx Biopharmaceuticals, Inc.

Our competitors generally have substantially more resources than we do, including both financial and technical. In addition, many of these companies have more experience than Nile in preclinical and clinical development, manufacturing, regulatory, and global commercialization. We are also competing with academic institutions, governmental agencies and private organizations that are conducting research in the field of cardiovascular disease. Competition for highly qualified employees is intense. See *"Risk Factors - Developments by competitors may render our products or technologies obsolete or non-competitive."*

Government Regulation

The research, development, testing, manufacture, labeling, promotion, advertising, distribution, and marketing, among other things, of our products are extensively regulated by governmental authorities in the U.S. and other countries. In the U.S., the FDA, regulates drugs under the Federal Food, Drug, and Cosmetic Act, or the FDCA, and its implementing regulations. Failure to comply with the applicable U.S. requirements may subject us to administrative or judicial sanctions, such as FDA refusal to approve a pending NDA, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, and/or criminal prosecution.

Drug Approval Process

None of our drugs may be marketed in the U.S. until the drug has received FDA approval. The steps required before a drug may be marketed in the U.S. include:

- preclinical laboratory tests, animal studies, and formulation studies;
- submission to the FDA of an IND for human clinical testing, which must become effective before human clinical trials may begin;
- adequate and well-controlled human clinical trials to establish the safety and efficacy of the drug for each indication;
- submission to the FDA of an NDA;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with current good manufacturing practices, or cGMPs; and
- FDA review and approval of the NDA.

Preclinical tests include laboratory evaluation of product chemistry, toxicity, and formulation, as well as animal studies. The conduct of the preclinical tests and formulation of the compounds for testing must comply with federal regulations and requirements. The results of the preclinical tests, together with manufacturing information and analytical data, are submitted to the FDA as part of an IND, which must become effective before human clinical trials may begin. An IND will automatically become effective 30 days after receipt by the FDA, unless before that time the FDA raises concerns or questions about issues such as the conduct of the trials as outlined in the IND. In such a case, the IND sponsor and the FDA must resolve any outstanding FDA concerns or questions before clinical trials can proceed. The Company cannot be sure that submission of an IND will result in the FDA allowing clinical trials to begin.

Clinical trials involve the administration of the investigational drug to human subjects under the supervision of qualified investigators. Clinical trials are conducted under protocols detailing the objectives of the study, the parameters to be used in monitoring safety, and the effectiveness criteria to be evaluated. Each protocol must be submitted to the FDA as part of the IND.

Clinical trials are typically conducted in three sequential “Phases”, although the Phases may overlap. The study protocol and informed consent information for study subjects in clinical trials must also be approved by an Institutional Review Board for each institution where the trials will be conducted. Study subjects must sign an informed consent form before participating in a clinical trial. Phase I usually involves the initial introduction of the investigational drug into people to evaluate its short-term safety, dosage tolerance, metabolism, pharmacokinetics and pharmacologic actions, and, if possible, to gain an early indication of its effectiveness. Phase II usually involves trials in a limited patient population to (i) evaluate dosage tolerance and appropriate dosage; (ii) identify possible adverse effects and safety risks; and (iii) evaluate preliminarily the efficacy of the drug for specific indications. Phase III trials usually further evaluate clinical efficacy and test further for safety by using the drug in its final form in an expanded patient population. There can be no assurance that Phase I, Phase II, or Phase III testing will be completed successfully within any specified period of time, if at all. Furthermore, the Company or the FDA may suspend clinical trials at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk.

The FDCA permits the FDA and the IND sponsor to agree in writing on the design and size of clinical studies intended to form the primary basis of an effectiveness claim in an NDA application. This process is known as Special Protocol Assessment. These agreements may not be changed after the clinical studies begin, except in limited circumstances.

Assuming successful completion of the required clinical testing, the results of the preclinical studies and of the clinical studies, together with other detailed information, including information on the manufacture and composition of the drug, are submitted to the FDA in the form of an NDA requesting approval to market the product for one or more indications. The testing and approval process requires substantial time, effort, and financial resources. The FDA reviews the application and may deem it to be inadequate to support the registration, and companies cannot be sure that any approval will be granted on a timely basis, if at all. The FDA may also refer the application to the appropriate advisory committee, typically a panel of clinicians, for review, evaluation and a recommendation as to whether the application should be approved. The FDA is not bound by the recommendations of the advisory committee.

The FDA has various programs, including fast track, priority review, and accelerated approval, that are intended to expedite or simplify the process for reviewing drugs, and/or provide for approval on the basis of surrogate endpoints. Generally, drugs that may be eligible for one or more of these programs are those for serious or life-threatening conditions, those with the potential to address unmet medical needs, and those that provide meaningful benefit over existing treatments. The Company cannot be sure that any of our drugs will qualify for any of these programs, or that, if a drug does qualify, that the review time will be reduced.

Section 505(b)(2) of the FDCA allows the FDA to approve a follow-on drug on the basis of data in the scientific literature or a prior FDA approval of an NDA for a related drug. This procedure potentially makes it easier for generic drug manufacturers to obtain rapid approval of new forms of drugs based on proprietary data of the original drug manufacturer.

Before approving an NDA, the FDA usually will inspect the facility or the facilities at which the drug is manufactured and will not approve the product unless cGMP compliance is satisfactory. If the FDA evaluates the NDA and the manufacturing facilities as acceptable, the FDA may issue an approval letter, or in some cases, an approvable letter followed by an approval letter. Both letters usually contain a number of conditions that must be met in order to secure final approval of the NDA. When and if those conditions have been met to the FDA’s satisfaction, the FDA will issue an approval letter. The approval letter authorizes commercial marketing of the drug for specific indications. As a condition of NDA approval, the FDA may require post-marketing testing and surveillance to monitor the drug’s safety or efficacy, or impose other conditions.

After approval, certain changes to the approved product, such as adding new indications, making certain manufacturing changes, or making certain additional labeling claims, are subject to further FDA review and approval. Before a company can market products for additional indications, it must obtain additional approvals from the FDA. Obtaining approval for a new indication generally requires that additional clinical studies be conducted. The Company cannot be sure that any additional approval for new indications for any product candidate will be approved on a timely basis, or at all.

Post-Approval Requirements

Often times, even after a drug has been approved by the FDA for sale, the FDA may require that certain post-approval requirements be satisfied, including the conduct of additional clinical studies. If such post-approval conditions are not satisfied, the FDA may withdraw its approval of the drug. In addition, holders of an approved NDA are required to (i) report certain adverse reactions to the FDA; (ii) comply with certain requirements concerning advertising and promotional labeling for their products; and (iii) continue to have quality control and manufacturing procedures conform to cGMP after approval. The FDA periodically inspects the sponsor's records related to safety reporting and/or manufacturing facilities; this latter effort includes assessment of compliance with cGMP. Accordingly, manufacturers must continue to expend time, money, and effort in the area of production and quality control to maintain cGMP compliance. We intend to use third-party manufacturers to produce our products in clinical and commercial quantities, and future FDA inspections may identify compliance issues at the facilities of our contract manufacturers that may disrupt production or distribution, or require substantial resources to correct. In addition, discovery of problems with a product after approval may result in restrictions on a product, manufacturer, or holder of an approved NDA, including withdrawal of the product from the market.

Research and Development

Our research and development expenses consist primarily of salaries and related personnel costs, fees paid to consultants and outside service providers for regulatory and quality assurance support, licensing of drug compounds, and other expenses relating to the manufacture, development, testing and enhancement of our product candidates. We expense our research and development costs as they are incurred.

Employees

As of the date of this Report, we have four employees, all of whom are full-time. We also retain several consultants who serve in various operational capacities. We expect to hire a full-time controller, as well as additional research and development and administrative staff in support of our existing product development.

RISK FACTORS

You should carefully consider the following risk factors and all other information contained in this report before purchasing shares of Nile Common Stock. Investing in Nile Common Stock involves a high degree of risk. If any of the following events or outcomes actually occurs, our business, operating results and financial condition could be materially and adversely affected. As a result, the trading price of Nile Common Stock could decline and you may lose all or part of the money you paid to purchase Nile Common Stock.

On September 17, 2007, the Merger was completed, and the business of Old Nile was adopted as our business. As such, the following Risk Factors are focused on the current and historical operations of Nile, and generally exclude the risks associated with the prior operations of SMI.

We currently have no product revenues and will need to raise substantial additional capital to operate our business.

To date, we have generated no product revenues, and do not expect to generate any revenues until, and only if, we receive approval to sell our drugs from the FDA and other regulatory authorities for our product candidates. Therefore, for the foreseeable future, we will have to fund all of our operations and capital expenditures from the net proceeds of the Offering, cash on hand, licensing fees and grants.

The use of the proceeds from the Offering will depend on many factors, including among other things the course of the clinical and regulatory development of CD-NP and 2NTX-99 and the acquisition of new technologies and personnel. Based on our current development plans, we expect that our current resources will be sufficient to fund our operations until the first quarter of 2009. We will need to seek substantial additional financing in order to continue developing our current and any future product candidates, which additional financing may not be available on favorable terms, if at all.

If we do not succeed in raising additional funds on acceptable terms, we may be unable to complete planned pre-clinical testing and human clinical trials or obtain approval of our product candidates from the FDA and other regulatory authorities. In addition, we could be forced to discontinue product development, reduce or forego attractive business opportunities. Any additional sources of financing will likely involve the issuance of our equity securities, which will have a dilutive effect on our stockholders.

We are not currently profitable and may never become profitable.

We expect to incur substantial losses and negative operating cash flow for the foreseeable future, and we may never achieve or maintain profitability. For the six months ended June 30, 2007, we had a net loss of $2,237,825 and for the period from our inception on August 1, 2005, through the year ended December 31, 2006, we had a net loss of $2,592,015. Since our inception through June 30, 2007, we have an accumulated deficit of $4,829,840 and stockholders' equity (deficit) of ($4,817,673). Even if we succeed in developing and commercializing one or more of our product candidates, we expect to incur substantial losses for the foreseeable future, as we:

- continue to undertake pre-clinical development and clinical trials for our product candidates;
- seek regulatory approvals for our product candidates;
- in-license or otherwise acquire additional products or product candidates;
- implement additional internal systems and infrastructure; and
- hire additional personnel.

We also expect to experience negative cash flow for the foreseeable future as we fund our operating losses and capital expenditures. As a result, we will need to generate significant revenues in order to achieve and maintain profitability. We may not be able to generate these revenues or achieve profitability in the future. Our failure to achieve or maintain profitability could negatively impact the value of Nile Common Stock.

We have a limited operating history upon which to base an investment decision.

We are a development-stage company and have not demonstrated our ability to perform the functions necessary for the successful commercialization of any of our product candidates. The successful commercialization of our product candidates will require us to perform a variety of functions, including:

- continuing to undertake pre-clinical development and clinical trials for our product candidates;
- participating in regulatory approval processes;
- formulating and manufacturing products; and
- conducting sales and marketing activities.

Our operations have been limited to organizing our Company, acquiring, developing and securing our proprietary technology and preparing for pre-clinical and clinical trials of our lead product candidate, CD-NP. These operations provide a limited basis for you to assess our ability to commercialize our product candidates and the advisability of investing in our securities.

We may not obtain the necessary U.S. or worldwide regulatory approvals to commercialize our product candidates.

We will need FDA approval to commercialize our product candidates in the U.S. and approvals from the FDA equivalent regulatory authorities in foreign jurisdictions to commercialize our product candidates in those jurisdictions. In order to obtain FDA approval of any of our product candidates, we must submit to the FDA a NDA demonstrating that the product candidate is safe for humans and effective for its intended use. This demonstration requires significant research and animal tests, which are referred to as pre-clinical studies, as well as human tests, which are referred to as clinical trials. Satisfaction of the FDA's regulatory requirements typically takes many years, depends upon the type, complexity and novelty of the product candidate and requires substantial resources for research, development and testing. We cannot predict whether our research and clinical approaches will result in drugs that the FDA considers safe for humans and effective for indicated uses. The FDA has substantial discretion in the drug approval process and may require us to conduct additional pre-clinical and clinical testing or to perform post-marketing studies. The approval process may also be delayed by changes in government regulation, future legislation or administrative action or changes in FDA policy that occur prior to or during our regulatory review. Delays in obtaining regulatory approvals may:

- delay commercialization of, and our ability to derive product revenues from, our product candidates;
- impose costly procedures on us; or
- diminish any competitive advantages that we may otherwise enjoy.

Even if we comply with all FDA requests, the FDA may ultimately reject one or more of our NDAs. We cannot be sure that we will ever obtain regulatory clearance for our product candidates. Failure to obtain FDA approval of any of our product candidates will severely undermine our business by reducing our number of salable products and, therefore, corresponding product revenues.

In foreign jurisdictions, we must receive approval from the appropriate regulatory authorities before we can commercialize our drugs. Foreign regulatory approval processes generally include all of the risks associated with the FDA approval procedures described above. We cannot assure that we will receive the approvals necessary to commercialize our product candidate for sale outside the U.S.

Each of our product candidates is in early stages of development.

Each of our product candidates, CD-NP and 2NTX-99, is in an early stage of development and requires extensive clinical testing before it will be approved by the FDA or another regulatory authority in a jurisdiction outside the U.S. We cannot predict with any certainty the results of such clinical testing. We cannot predict with any certainty if, or when, we might commence any such clinical trials or whether such trials will yield sufficient data to permit us to proceed with additional clinical development and ultimately submit an application for regulatory approval of our product candidates in the U.S. or abroad, or whether such applications will be accepted by the appropriate regulatory agency.

Our products use novel alternative technologies and therapeutic approaches, which have not been widely studied.

Our product development efforts focus on novel therapeutic approaches and technologies that have not been widely studied. These approaches and technologies may not be successful. We are applying these approaches and technologies in our attempt to discover new treatments for conditions that are also the subject of research and development efforts of many other companies.

The results of our clinical trials may not support our product candidate claims.

Even if our clinical trials are completed as planned, we cannot be certain that their results will support the claims of our product candidates. Success in pre-clinical testing and early clinical trials does not ensure that later clinical trials will be successful, and we cannot be sure that the results of later clinical trials will replicate the results of prior clinical trials and pre-clinical testing. The clinical trial process may fail to demonstrate that our product candidates are safe for humans and effective for indicated uses. This failure would cause us to abandon a product candidate and may delay development of other product candidates. Any delay in, or termination of, our clinical trials will delay the filing of our NDAs with the FDA and, ultimately, our ability to commercialize our product candidates and generate product revenues. In addition, our clinical trials involve a small patient population. Because of the small sample size, the results of these clinical trials may not be indicative of future results.

Physicians and patients may not accept and use our drugs.

Even if the FDA approves our product candidates, physicians and patients may not accept and use them. Acceptance and use of our product will depend upon a number of factors including:

- perceptions by members of the health care community, including physicians, about the safety and effectiveness of our drugs;
- cost-effectiveness of our products relative to competing products;
- availability of reimbursement for our products from government or other healthcare payers; and
- effectiveness of marketing and distribution efforts by us and our licensees and distributors, if any.

Because we expect sales of our current product candidates, if approved, to generate substantially all of our product revenues for the foreseeable future, the failure of any of these drugs to find market acceptance would harm our business and could require us to seek additional financing.

Our drug-development program depends upon third-party researchers who are outside our control.

We will depend upon independent investigators and collaborators, such as universities and medical institutions, to conduct our pre-clinical and clinical trials under agreements with us. These collaborators are not our employees and we cannot control the amount or timing of resources that they devote to our programs. These investigators may not assign as great a priority to our programs or pursue them as diligently as we would if we were undertaking such programs ourselves. If outside collaborators fail to devote sufficient time and resources to our drug-development programs, or if their performance is substandard, the approval of our FDA applications, if any, and our introduction of new drugs, if any, will be delayed. These collaborators may also have relationships with other commercial entities, some of whom may compete with us. If our collaborators assist our competitors at our expense, our competitive position would be harmed.

We rely exclusively on third parties to formulate and manufacture our product candidates.

We have no experience in drug formulation or manufacturing and do not intend to establish our own manufacturing facilities. We lack the resources and expertise to formulate or manufacture our own product candidates. We currently, and intend in the future, to contract with one or more manufacturers to manufacture, supply, store and distribute drug supplies for our clinical trials. If any of our product candidates receive FDA approval, we will rely on one or more third-party contractors to manufacture our drugs. Our anticipated future reliance on a limited number of third-party manufacturers exposes us to the following risks:

- We may be unable to identify manufacturers on acceptable terms or at all, because the number of potential manufacturers is limited and subsequent to NDA approval, the FDA must approve any replacement contractor. This approval would require new testing and compliance inspections. In addition, a new manufacturer may have to be educated in, or develop substantially equivalent processes for, production of our products after receipt of FDA approval, if any.

- Our third-party manufacturers might be unable to formulate and manufacture our drugs in the volume and of the quality required to meet our clinical needs and commercial needs, if any.

- Our future contract manufacturers may not perform as agreed or may not remain in the contract manufacturing business for the time required to supply our clinical trials or to successfully produce, store and distribute our products.

- Drug manufacturers are subject to ongoing periodic unannounced inspection by the FDA, the Drug Enforcement Agency, and corresponding state agencies to ensure strict compliance with good manufacturing practice and other government regulations and corresponding foreign standards. We do not have control over third-party manufacturers' compliance with these regulations and standards.

Each of these risks could delay our clinical trials, the approval, if any of our product candidates by the FDA or the commercialization of our product candidates or result in higher costs or deprive us of potential product revenues.

We have no experience selling, marketing or distributing products and no internal capability to do so.

We currently have no sales, marketing or distribution capabilities. We do not anticipate having resources in the foreseeable future to allocate to the sales and marketing of our proposed products. Our future success depends, in part, on our ability to enter into and maintain sales and marketing collaborative relationships, the collaborator's strategic interest in the products under development and such collaborator's ability to successfully market and sell any such products. We intend to pursue collaborative arrangements regarding the sales and marketing of our products, however, there can be no assurance that we will be able to establish or maintain such collaborative arrangements, or if able to do so, that they will have effective sales forces. To the extent that we decide not to, or are unable to, enter into collaborative arrangements with respect to the sales and marketing of our proposed products, significant capital expenditures, management resources and time will be required to establish and develop an in-house marketing and sales force with technical expertise. There can also be no assurance that we will be able to establish or maintain relationships with third-party collaborators or develop in-house sales and distribution capabilities. To the extent that we depend on third parties for marketing and distribution, any revenues we receive will depend upon the efforts of such third parties, and there can be no assurance that such efforts will be successful. In addition, there can also be no assurance that we will be able to market and sell our product in the U.S. or overseas.

If we cannot compete successfully for market share against other drug companies, we may not achieve sufficient product revenues and our business will suffer.

The market for our product candidates is characterized by intense competition and rapid technological advances. If our product candidates receive FDA approval, they will compete with a number of existing and future drugs and therapies developed, manufactured and marketed by others. Existing or future competing products may provide greater therapeutic convenience or clinical or other benefits for a specific indication than our products, or may offer comparable performance at a lower cost. If our products fail to capture and maintain market share, we may not achieve sufficient product revenues and our business will suffer.

We will compete against fully integrated pharmaceutical companies and smaller companies that are collaborating with larger pharmaceutical companies, academic institutions, government agencies and other public and private research organizations. Many of these competitors have technologies already approved or in development. In addition, many of these competitors, either alone or together with their collaborative partners, operate larger research and development programs and have substantially greater financial resources than we do, as well as significantly greater experience in:

- developing drugs;
- undertaking pre-clinical testing and human clinical trials;
- obtaining FDA and other regulatory approvals of drugs;
- formulating and manufacturing drugs; and
- launching, marketing and selling drugs.

Developments by competitors may render our products or technologies obsolete or non-competitive.

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. The drugs that we are attempting to develop will have to compete with existing therapies. In addition, a large number of companies are pursuing the development of pharmaceuticals that target the same diseases and conditions that we are targeting. We face competition from pharmaceutical and biotechnology companies in the U.S. and abroad. In addition, companies pursuing different but related fields represent substantial competition. Many of these organizations competing with us have substantially greater capital resources, larger research and development staffs and facilities, longer drug development history in obtaining regulatory approvals and greater manufacturing and marketing capabilities than we do. These organizations also compete with us to attract qualified personnel and parties for acquisitions, joint ventures or other collaborations.

If we fail to protect or enforce our intellectual property rights adequately or secure rights to patents of others, the value of our intellectual property rights would diminish.

Our success, competitive position and future revenues will depend in part on our ability and the abilities of our licensors to obtain and maintain patent protection for our products, methods, processes and other technologies, to preserve our trade secrets, to prevent third parties from infringing on our proprietary rights and to operate without infringing upon the proprietary rights of third parties. Additionally, if any third-party manufacturer makes improvements in the manufacturing process for our products, we may not own, or may have to share, the intellectual property rights to the innovation.

To date, we hold certain exclusive rights under U.S. patents and patent applications as well as rights under foreign patent applications. We anticipate filing additional patent applications both in the U.S. and in other countries, as appropriate. However, we cannot predict:

- the degree and range of protection any patents will afford us against competitors including whether third parties will find ways to invalidate or otherwise circumvent our patents;

- if and when patents will issue;
- whether or not others will obtain patents claiming aspects similar to those covered by our patents and patent applications; or
- whether we will need to initiate litigation or administrative proceedings which may be costly whether we win or lose.

If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer.

Our success also depends upon the skills, knowledge and experience of our scientific and technical personnel, our consultants and advisors as well as our licensors and contractors. To help protect our proprietary know-how and our inventions for which patents may be unobtainable or difficult to obtain, we rely on trade secret protection and confidentiality agreements. To this end, we require all of our employees, consultants, advisors and contractors to enter into agreements which prohibit the disclosure of confidential information and, where applicable, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business. These agreements may not provide adequate protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use or disclosure or the lawful development by others of such information. If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer.

If we infringe upon the rights of third parties we could be prevented from selling products, forced to pay damages, and defend against litigation.

If our products, methods, processes and other technologies infringe upon the proprietary rights of other parties, we could incur substantial costs and we may have to:

- obtain licenses, which may not be available on commercially reasonable terms, if at all;
- redesign our products or processes to avoid infringement;
- stop using the subject matter claimed in the patents held by others;
- pay damages; or
- defend litigation or administrative proceedings which may be costly whether we win or lose, and which could result in a substantial diversion of our valuable management resources.

If requirements under our license agreements are not met, we could suffer significant harm, including losing rights to our products.

We depend on licensing agreements with third parties to maintain the intellectual property rights to our products under development. Presently, we have licensed rights from Mayo and Dr. Casagrande. These agreements require us and our licensors to perform certain obligations that affect our rights under these licensing agreements. All of these agreements last either throughout the life of the patents, or with respect to other licensed technology, for a number of years after the first commercial sale of the relevant product.

In addition, we are responsible for the cost of filing and prosecuting certain patent applications and maintaining certain issued patents licensed to us. If we do not meet our obligations under our license agreements in a timely manner, we could lose the rights to our proprietary technology.

Finally, we may be required to obtain licenses to patents or other proprietary rights of third parties in connection with the development and use of our products and technologies. Licenses required under any such patents or proprietary rights might not be made available on terms acceptable to us, if at all.

Our ability to generate product revenues will be diminished if our drugs sell for inadequate prices or patients are unable to obtain adequate levels of reimbursement.

Our ability to commercialize our drugs, alone or with collaborators, will depend in part on the extent to which reimbursement will be available from:

- government and health administration authorities;
- private health maintenance organizations and health insurers; and
- other healthcare payers.

Significant uncertainty exists as to the reimbursement status of newly approved healthcare products. Healthcare payers, including Medicare, are challenging the prices charged for medical products and services. Government and other healthcare payers increasingly attempt to contain healthcare costs by limiting both coverage and the level of reimbursement for drugs. Even if our product candidates are approved by the FDA, insurance coverage may not be available, and reimbursement levels may be inadequate, to cover our drugs. If government and other healthcare payers do not provide adequate coverage and reimbursement levels for any of our products, once approved, market acceptance of our products could be reduced.

We may not successfully manage our growth.

Our success will depend upon the expansion of our operations and the effective management of our growth, which will place a significant strain on our management and on our administrative, operational and financial resources. To manage this growth, we may need to expand our facilities, augment our operational, financial and management systems and hire and train qualified personnel. If we are unable to manage our growth effectively, our business would be harmed.

We may be exposed to liability claims associated with the use of hazardous materials and chemicals.

Our research and development activities may involve the controlled use of hazardous materials and chemicals. Although we believe that our safety procedures for using, storing, handling and disposing of these materials comply with federal, state and local laws and regulations, we cannot completely eliminate the risk of accidental injury or contamination from these materials. In the event of such an accident, we could be held liable for any resulting damages and any liability could materially adversely effect our business, financial condition and results of operations. In addition, the federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of hazardous or radioactive materials and waste products may require us to incur substantial compliance costs that could materially adversely affect our business, financial condition and results of operations.

We will rely on key executive officers and scientific and medical advisors, whose knowledge of our business and technical expertise would be difficult to replace.

We currently rely on certain key executive officers, the loss of any one or more of whom could delay our development program. We are and will be highly dependent on our principal scientific, regulatory and medical advisors. We do not have “key person” life insurance policies for any of our officers. The loss of the technical knowledge and management and industry expertise of any of our key personnel could result in delays in product development, loss of customers and sales and diversion of management resources, which could adversely affect our operating results.

If we are unable to hire additional qualified personnel, our ability to grow our business may be harmed.

Attracting and retaining qualified personnel will be critical to our success. Our success is highly dependent on the hiring and retention of key personnel and scientific staff. While we are actively recruiting additional experienced members for the management team, there is intense competition and demand for qualified personnel in our area of business and no assurances can be made that we will be able to retain the personnel necessary for the development of our business on commercially reasonable terms, if at all. Certain of our current officers, directors, scientific advisors and/or consultants or certain of the officers, directors, scientific advisors and/or consultants hereafter appointed may from time to time serve as officers, directors, scientific advisors and/or consultants of other biopharmaceutical or biotechnology companies. We rely, in substantial part, and for the foreseeable future will rely, on certain independent organizations, advisors and consultants to provide certain services, including substantially all aspects of regulatory approval, clinical management, and manufacturing. There can be no assurance that the services of independent organizations, advisors and consultants will continue to be available to us on a timely basis when needed, or that we can find qualified replacements.

We may incur substantial liabilities and may be required to limit commercialization of our products in response to product liability lawsuits.

The testing and marketing of medical products entail an inherent risk of product liability. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our products. Our inability to obtain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of pharmaceutical products we develop, alone or with corporate collaborators. Even if our agreements with any future corporate collaborators entitle us to indemnification against losses, such indemnification may not be available or adequate should any claim arise.

There are certain interlocking relationships among us and certain affiliates of Two River Group Holdings, LLC, which may present potential conflicts of interest.

Peter M. Kash, Joshua A. Kazam and David M. Tanen, each a director and substantial stockholder of our Company, are the managing members of Two River Group Holdings, LLC, or Two River, a venture capital firm specializing in biotechnology companies, and are officers and directors of Riverbank Capital Securities, Inc., or Riverbank, a broker dealer registered with the Financial Industry Regulatory Authority (FINRA, formerly NASD). Mr. Tanen also serves as our Secretary and Scott Navins, the Vice President of Finance for Two River, serves as our Treasurer. Additionally, certain employees of Two River, who are also our stockholders, perform substantial operational activity for us, including without limitation financial, clinical and regulatory activities. Generally, Delaware corporate law requires that any transactions between us and any of our affiliates be on terms that, when taken as a whole, are substantially as favorable to us as those then reasonably obtainable from a person who is not an affiliate in an arms-length transaction. Nevertheless, none of our affiliates or Two River is obligated pursuant to any agreement or understanding with us to make any additional products or technologies available to us, nor can there be any assurance, and the investors should not expect, that any biomedical or pharmaceutical product or technology identified by such affiliates or Two River in the future will be made available to us. In addition, certain of our current officers and directors or certain of any officers or directors hereafter appointed may from time to time serve as officers or directors of other biopharmaceutical or biotechnology companies. There can be no assurance that such other companies will not have interests in conflict with our own.

We are controlled by current directors and principal stockholders.

After the Merger, our directors and principal stockholders beneficially owned approximately 34.51% of our outstanding voting securities. Accordingly, our executive officers, directors, principal stockholders and certain of their affiliates will have the ability to exert substantial influence over the election of our board of directors and the outcome of issues submitted to our stockholders.

We are required to file a registration statement for shares of Nile Common Stock received by stockholders who purchased shares of Old Nile Common Stock in the Offering.

We have agreed, at our expense, to prepare within 60 days of the closing of the Merger, a Securities Act registration statement covering the resale of shares of Nile Common Stock received by stockholders who purchased shares of Old Nile Common Stock in the Offering. In the event that such registration statement is not filed within 60 days after the Merger, we will be required to pay to each investor holding securities to be registered, as liquidated damages and not as a penalty, an amount, for each month (or portion of a month) in which such delay shall occur, equal to 1 percent of the purchase price paid by such investor, until we have cured the delay. Our financial condition and operating results will be harmed if we are required to pay such liquidated damages. Our obligation to register the shares of Nile Common Stock is subject to any limitation on our ability to register the full complement of such shares in accordance with Rule 415 under the Securities Act or other regulatory limitations. To the extent the number of such shares that can be registered is so limited, the Company will be obligated to use its commercially reasonable efforts to register additional tranches of registrable securities as soon as permissible thereafter under applicable laws, rules and regulations so that all of such registrable securities are registered as soon as reasonably practicable. The filing of a registration statement with the SEC can be costly and time-consuming, which could materially and adversely affect Nile.

We will be required to implement additional finance and accounting systems, procedures and controls in order to satisfy requirements under the securities laws, including the Sarbanes-Oxley Act of 2002, which will increase our costs and divert management's time and attention.

We are in a continuing process of establishing controls and procedures that will allow our management to report on, and our independent registered public accounting firm to attest to, our internal control over financial reporting when required to do so under Section 404 of the Sarbanes-Oxley Act of 2002. As a company with limited capital and human resources, we anticipate that more of management's time and attention will be diverted from our business to ensure compliance with these regulatory requirements than would be the case with a company that has well established controls and procedures. This diversion of management's time and attention may have a material adverse effect on our business, financial condition and results of operations.

In the event we identify significant deficiencies or material weaknesses in our internal control over financial reporting that we cannot remediate in a timely manner, or if we are unable to receive a positive attestation from our independent registered public accounting firm with respect to our internal control over financial reporting when we are required to do so, investors and others may lose confidence in the reliability of our financial statements. If this occurs, the trading price of Nile Common Stock, if any, and ability to obtain any necessary equity or debt financing could suffer. In addition, in the event that our independent registered public accounting firm is unable to rely on our internal control over financial reporting in connection with its audit of our financial statements, and in the further event that it is unable to devise alternative procedures in order to satisfy itself as to the material accuracy of our financial statements and related disclosures, we may be unable to file our Annual Report on Form 10-K with the SEC. This would likely have an adverse affect on the trading price of Nile Common Stock, if any, and our ability to secure any necessary additional financing, and could result in the delisting of Nile Common Stock if we are listed on an exchange in the future. In such event, the liquidity of Nile Common Stock would be severely limited and the market price of Nile Common Stock would likely decline significantly.

Our internal controls over financial reporting do not currently meet all of the standards contemplated by Section 404 of the Sarbanes-Oxley Act, and failure to achieve and maintain effective internal controls over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our business and common stock price.

Our internal controls over financial reporting do not currently meet all of the standards contemplated by Section 404 of the Sarbanes-Oxley Act that we will eventually be required to meet. We are in the process of addressing our internal controls over financial reporting and are establishing formal policies, processes and practices related to financial reporting and to the identification of key financial reporting risks, assessment of their potential impact and linkage of those risks to specific areas and activities within our organization.

Additionally, we expect to begin the process of documenting our internal control procedures to satisfy the requirements of Section 404, which requires annual management assessments of the effectiveness of our internal controls over financial reporting and a report by our independent registered public accounting firm addressing these assessments. Because we do not currently have comprehensive documentation of our internal controls and have not yet tested our internal controls in accordance with Section 404, we cannot conclude in accordance with Section 404 that we do not have a material weakness in our internal controls or a combination of significant deficiencies that could result in the conclusion that we have a material weakness in our internal controls. As a public entity, we will be required to complete our initial assessment in a timely manner. If we are not able to implement the requirements of Section 404 in a timely manner or with adequate compliance, our independent registered public accounting firm may not be able to certify as to the adequacy of our internal controls over financial reporting. Matters impacting our internal controls may cause us to be unable to report our financial information on a timely basis and thereby subject us to adverse regulatory consequences, including sanctions by the SEC or violations of applicable stock exchange listing rules. There could also be a negative reaction in the financial markets due to a loss of investor confidence in us and the reliability of our financial statements. Confidence in the reliability of our financial statements could also suffer if our independent registered public accounting firm were to report a material weakness in our internal controls over financial reporting. This could materially adversely affect us and lead to a decline in the market price of Nile Common Stock.

Nile Common Stock is considered "a penny stock."

The SEC has adopted regulations which generally define "penny stock" to be an equity security that has a market price of less than $5.00 per share, subject to specific exemptions. Following the Merger, the market price of Nile Common Stock is likely to be less than $5.00 per share and therefore may be a "penny stock" according to SEC rules. This designation requires any broker or dealer selling these securities to disclose certain information concerning the transaction, obtain a written agreement from the purchaser and determine that the purchaser is reasonably suitable to purchase the securities. These rules may restrict the ability of brokers or dealers to sell Nile Common Stock.

We have never paid dividends.

We have never paid dividends on our capital stock and do not anticipate paying any dividends for the foreseeable future.

There may be additional issuances of shares of blank check preferred stock in the future.

Our certificate of incorporation authorizes the issuance of up to 10,000,000 shares of preferred stock, none of which are issued or currently outstanding. The board of directors will have the authority to fix and determine the relative rights and preferences of preferred shares, as well as the authority to issue such shares, without further stockholder approval. As a result, the board of directors could authorize the issuance of a series of preferred stock that is senior to the Nile Common Stock and that would grant to holders preferred rights to our assets upon liquidation, the right to receive dividends, additional registration rights, anti-dilution protection, the right to the redemption to such shares, together with other rights, none of which will be afforded holders of Nile Common Stock.

Upon the effective date of our next registration statement, there will be a significant number of shares of Nile Common Stock eligible for sale, which could depress the market price of Nile Common Stock.

Following the effective date of our next registration statement, up to 8,810,336 shares of Nile Common Stock will become available for sale in the public market, which could harm the market price. Further, following the holding period prescribed under SEC regulations, some or all of our shares may be offered from time to time in the open market pursuant to Rule 144, and these sales may have a depressive effect on the market for Nile Common Stock. In general, a person who has held restricted shares for a period of one year may, upon filing with the SEC a notification on Form 144, sell into the market common stock in an amount equal to the greater of 1% of the outstanding shares or the average weekly number of shares sold in the last four weeks prior to such sale. Such sales may be repeated once every three months, and any of the restricted shares may be sold by a non-affiliate after they have been held two years.

We cannot assure you that Nile Common Stock will ever be listed on NASDAQ or any other securities exchange.

We plan in the future to seek listing on NASDAQ or the American Stock Exchange. However, we cannot assure you that we will be able to meet the initial listing standards of either of those or any other stock exchange, or that we will be able to maintain a listing of Nile Common Stock on either of those or any other stock exchange.

2. MANAGEMENT'S DISCUSSION AND PLAN OF OPERATION

The following discussion and plan of operations should read in conjunction with the financial statements and the notes to those statements included in this 8-K. This discussion includes forward-looking statements that involve risk and uncertainties. As a result of many factors, such as those set forth under "*Risk Factors*," actual results may differ materially from those anticipated in these forward-looking statements.

Acquisition and Reorganization

On September 17, 2007, the Merger was completed, and the business of Old Nile was adopted as our business. As such, the following Management Discussion is focused on the current and historical operations of Nile, and excludes the prior operations of SMI.

Overview

Our company develops and commercializes innovative products for the treatment of cardiovascular and metabolic disease. Our efforts and resources are focused on acquiring and developing our pharmaceutical product candidates, raising capital and recruiting personnel. Our lead compound is CD-NP, a chimeric natriuretic peptide in Phase I clinical studies for the treatment of heart failure. We believe CD-NP may be useful in several cardiovascular and renal indications, and is initially being developed as a treatment for heart failure. We are also developing 2NTX-99, a pre-clinical, small molecule, anti-atherothrombotic agent with NO-donating properties.

We have no product sales to date and we will not receive any product revenue until we receive approval from the FDA or equivalent foreign regulatory bodies to begin selling our pharmaceutical candidates. Developing pharmaceutical products, however, is a lengthy and very expensive process. Assuming we do not encounter any unforeseen safety issues during the course of developing our product candidates, we do not expect to complete the development of a product candidate for several years, if ever. Currently, nearly all of our development expenses have related to our lead product candidate, CD-NP.

As we proceed with the clinical development of CD-NP and as we further develop 2NTX-99, our second product candidate, our research and development expenses will further increase. To the extent we are successful in acquiring additional product candidates for our development pipeline, our need to finance further research and development will continue increasing. Accordingly, our success depends not only on the safety and efficacy of our product candidates, but also on our ability to finance the development of the products. Our major sources of working capital have been proceeds from various private financings, primarily private sales of Old Nile Common Stock and other equity securities and debt financings.

Our results include non-cash compensation expense as a result of the issuance of stock and stock option grants. Effective August 2005, we adopted Statement of Financial Accounting Standards No. 123R, *Share Based Payment*, or SFAS 123R. SFAS 123R requires us to expense the fair value of stock options over the vesting period. We determine the fair value of stock options using the Black-Scholes options pricing model. The terms and vesting schedules for share-based awards vary by type of grant and the employment status of the grantee. Generally, the awards vest based upon time-based or performance-based conditions. Performance-based conditions generally include the attainment of goals related to our financial and development performance. See "*Employment Agreements, Termination of Employment and Change-in-Control Arrangements."* Stock-based compensation expense is included in the respective categories of expense in the statement of operations. We expect to record additional non-cash compensation expense in the future, which may be significant.

Plan of Operation

We expect our principal expenditures during the next 12 months to include, among other things:

· operating expenses, including expanded general and administrative expenses; and

· research and development expenses, including the costs incurred with respect to applications to conduct clinical trials in the U.S. for our lead product, CD-NP, and pre-clinical testing of 2NTX-99.

Our plan of operation for the year ending December 31, 2007 is to continue implementing our business strategy, including the clinical development of our product candidates. We also intend to expand our drug candidate portfolio by acquiring additional drug technologies for development.

As part of our planned expansion, we anticipate hiring up to four (4) additional full-time employees devoted to research and development activities and one or more additional full-time employees for general and administrative activities. In addition, we intend to use clinical research organizations and third parties to perform our clinical studies and manufacturing. During 2007, we expect to spend approximately $4.5 million on clinical research and development activities, and approximately $1.5 million on general and administrative expenses.

Research and Development Projects; Related Expenses

CD-NP

We plan to initiate a Phase Ib study of CD-NP in heart failure patients in the fourth quarter of 2007. The purpose of the study is to examine the safety, pharmacokinetics and pharmacologic activity of varying doses of CD-NP in patients with heart failure. In parallel, Mayo plans to initiate a Phase Ib study in cooperation with us, which is being sponsored by the National Institute of Health, or the NIH, to comprehensively evaluate the effects of CD-NP on renal hemodynamics and renal function in chronic heart failure patients.

2NTX-99

On August 6, 2007, Old Nile exclusively licensed the worldwide rights to 2NTX-99, a small molecule compound designed to improve on the efficacy and potency of picotamide, a generic anti-platelet therapy marketed in Italy. 2NTX-99 is in the pre-clinical stage of development and Nile expects to complete pre-clinical toxicology studies and manufacturing by the end of 2009. To date, we have not incurred any expenses in connection with the research and development of 2NTX-99 other than the initial licensing fees described herein.

Off Balance Sheet Arrangements

There were no off-balance sheet arrangements as of September 17, 2007.

3. DESCRIPTION OF PROPERTY

Following the Merger, our principal offices are located at 2850 Telegraph Avenue, Suite 310, Berkeley, CA 94705. Under the terms of a three-year lease with Seagate Telegraph Associates, LLC, the monthly base rent is $6,087 per month through April 30, 2008, $6,320 per month effective May 1, 2008 and $6,553 per month effective May 1, 2009. We are also responsible for payment of our share of certain *pro rata* common charges such as operating costs and taxes in excess of the base year and additional rent. In connection with this lease, we have made a $14,000 cash deposit. The lease expires on April 30, 2010. As our operations expand, we expect our space requirements and related expenses to increase.

4. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table summarizes certain information regarding the beneficial ownership (as such term is defined in Rule 13d-3 under the Securities Exchange Act of 1934) of outstanding Nile Common Stock as of September 17, 2007 (after giving effect to the Merger) by (i) each person known by us to be the beneficial owner of more than 5% of the outstanding Nile Common Stock, (ii) each of our directors, (iii) each of our named executive officers (as defined in Item 402(a)(3) of Regulation S-B under the Securities Act), and (iv) all executive officers and directors as a group. Except as indicated in the footnotes below, the security and stockholders listed below possess sole voting and investment power with respect to their shares.

Name of Beneficial Owner	Shares of Nile Common Stock Beneficially Owned (#)(1)	Percentage of Nile Common Stock Beneficially Owned (%)(1)
Peter M. Strumph (2) 2850 Telegraph Avenue, Suite #310 Berkeley, CA 94705	0	*
Daron Evans (3) 2850 Telegraph Avenue, Suite #310 Berkeley, CA 94705	0	*
Wexford Capital LLC (4) 411 West Putnam Avenue Greenwich, CT 06830	2,623,619	10.88%
RIT Capital Partners, Plc 27 St. James Place London, UK SW1A 1NR	1,741,690	7.23%
David M. Tanen (5) 689 Fifth Avenue, 14th Floor New York, NY 10022	1,507,705	6.26%
Peter M. Kash (6) 689 Fifth Avenue, 14th Floor New York, NY 10022	1,492,796	6.19%
Joshua A. Kazam (7) 689 Fifth Avenue, 14th Floor New York, NY 10022	1,231,820	5.11%
Scott L. Navins 689 Fifth Avenue, 14th Floor New York, NY 10022	206,912	*
Paul Mieyal 411 West Putnam Avenue Greenwich, CT 06830	0	*
Dr. Allan Gordon (8) 6936 Bristol Dr. Berkeley, CA 94705	593,743	2.46%
Directors and named executive officers as a group, 8 individuals (9)	4,827,114	19.55%

* represents less than 1%.

(1) Assumes 24,099,716 shares of Nile Common Stock are outstanding. Beneficial ownership is determined in accordance with Rule 13d-3 under the Securities Act, and includes any shares as to which the security or stockholder has sole or shared voting power or investment power, and also any shares which the security or stockholder has the right to acquire within 60 days of the date hereof, whether through the exercise or conversion of any stock option, convertible security, warrant or other right. The indication herein that shares are beneficially owned is not an admission on the part of the security or stockholder that he, she or it is a direct or indirect beneficial owner of those shares.

(2) Excludes issued and outstanding options to purchase up to 1,876,491 shares of Nile Common Stock which are not exercisable within 60 days of the date hereof. See *"Employment Agreements, Termination of Employment and Change-in-Control Agreements."*

(3) Excludes issued and outstanding options to purchase 528,354 shares of Nile Common Stock which are not exercisable within 60 days of the date hereof. See *"Employment Agreements, Termination of Employment and Change-in-Control Agreements."*

(4) Includes (i) 1,910,103 shares of Nile Common Stock held by Iota Investors LLC, a Delaware limited liability company ("Iota Investors"); (ii) five year warrants to purchase 16,841 shares of Nile Common Stock at an exercise price of $2.71 per share held by Iota Investors; and (iii) 696,675 shares of Nile Common Stock held by Wexford Spectrum Investors LLC, a Delaware limited liability company ("Wexford Spectrum"). Wexford Capital LLC, a Connecticut limited liability company ("Wexford Capital") is a registered Investment Advisor and also serves as an investment advisor or sub-advisor to the members of Iota Investors and Wexford Spectrum. Mr. Charles E. Davidson is chairman, a managing member and a controlling member of Wexford Capital and Mr. Joseph M. Jacobs is chairman, a managing member and a controlling member of Wexford Capital.

(5) Excludes 137,941 shares of Common Stock held by Mr. Tanen's wife as custodian for the benefit of their minor daughter under the Uniform Gift to Minors Act (UGMA).

(6) Excludes 496,589 shares of Nile Common Stock held by Mr. Kash's wife as custodian for the benefit of each of their four minor children under the UGMA and 165,530 shares of Nile Common Stock held by the Kash Family Foundation. Includes five year warrants to purchase 1,051 shares of Nile Common Stock at an exercise price equal to $2.71 per share

(7) Includes 165,530 shares of Nile Common Stock held by the Kash Family Foundation, for which Mr. Kazam serves as Trustee. Mr. Kazam controls the right to vote and dispose of the shares held by the Kash Family Foundation, but has no pecuniary interest therein. Excludes 613,841 shares of Nile Common Stock held by the Kazam Family Trust and 165,530 shares of Nile Common Stock held by Mr. Kazam's wife as custodian for the benefit of their minor daughter under the UGMA. Mr. Kazam disclaims beneficial ownership of these shares, as well.

(8) Represents options to purchase 593,743 shares of Nile Common Stock. See *"Severance and Change-in-Control Agreements."*

(9) Includes 4,232,320 shares of common stock beneficially held by directors and officers, warrants to purchase 1,051 shares of common stock held by certain directors and officers, and options to purchase 593,743 shares of common stock held by certain directors and officers.

5. DIRECTORS AND EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS

Changes in Control and Management

At the effective time of the Merger, our board of directors was reconstituted by the appointment of Mr. Peter Strumph, Mr. Peter Kash, Mr. Joshua Kazam, Mr. David Tanen and Mr. Paul Mieyal as directors (all of whom were directors of Old Nile immediately prior to and after the Merger), and the resignation of Geoffrey Alison from his role as our sole director. Our executive management team was also reconstituted following the resignation of Mr. Geoffrey Alison as SMI's president. The following table sets forth the name, age and position of each of our directors and executive officers after the Merger.

Executive Officers and Directors

Name	Age	Positions
Peter M. Strumph	42	Chief Executive Officer and Director
Daron Evans	34	Chief Financial Officer
Peter M. Kash	46	Director
Joshua A. Kazam	30	Director
Paul Mieyal	37	Director
David M. Tanen	36	Secretary and Director
Scott L. Navins	36	Treasurer
Jennifer Hodge	39	Vice President, Development

Peter M. Strumph. Mr. Strumph has served as Old Nile's Chief Executive Officer since June 4, 2007, and possesses over 10 years of cardiovascular drug development experience. Following the Merger, Mr. Strumph was elected a director of the Company and appointed Chief Executive Officer of the Company. Prior to joining Nile, from 1997 to 2007 Mr. Strumph worked for CV Therapeutics, Inc., or CVT, which discovers, develops, commercializes and sells cardiovascular therapeutic products. His latest position at CVT was Senior Vice President of Operations. At CVT, at various times, Mr. Strumph had responsibility for several functions including, pharmaceutical development and manufacturing, marketing, quality assurance/control, clinical trial operations, project management and alliance management. Additionally, Mr. Strumph was a member of the CEO Executive Staff, was the Project Team Leader for Ranexa™ and served as the Chair of the Product Development Committee. Prior to joining CVT in 1997, Mr. Strumph served as Manager, Operations Planning and Development at Biogen, Inc. where he played an active role in Biogen's transition from a research based company to a fully integrated profitable biotechnology company. Mr. Strumph received his M.B.A. in Finance and Healthcare Management from The Wharton School at the University of Pennsylvania and his B.S. in Systems Science and Engineering from The University of Pennsylvania. He also served as a Lieutenant in the United States Navy.

Daron Evans. Mr. Evans served as Old Nile's Chief Operating Officer since January 15, 2007. Following the Merger, Mr. Evans was appointed Chief Financial Officer of the Company. Mr. Evans has over 10 years of professional experience in drug development financial analysis and fiscal control. Prior to joining Nile, from 2006 to 2007, Mr. Evans served as Director of Business Assessment at Vistakon, a Johnson & Johnson company, where he led efforts to improve R&D efficiency and speed to market. Prior to that, from 2004 to 2006, he was a Director of Portfolio & Business Analytics for Scios R&D, a Johnson & Johnson company, where he was responsible for financial controls and reporting for portfolio of six clinical stage programs and five preclinical stage programs. While at Scios, Mr. Evans also served as Project Manager for the European registration trial of nesiritide. Mr. Evans also has experience as co-founder of a biotechnology diagnostic company, and has worked as a Management Consultant in the pharmaceutical industry with Booz Allen Hamilton. Mr. Evans received his M.B.A. from The Fuqua School of Business at the Duke University, his M.S. in Biomedical Engineering from Southwestern Medical School & University of Texas at Arlington and his B.S. in Chemical Engineering from Rice University.

Jennifer Hodge. Beginning August 31, 2007, Ms. Hodge has served as our Vice President, Development. Following the Merger, Ms. Hodge was appointed as Vice President, Development of the Company. Ms. Hodge has 18 years of international drug development experience spanning discovery through commercialization. Prior to joining Nile, from 2000 to 2007, Ms. Hodge worked at CVT where she most recently served as the Director of Project Management. While at CVT, Ms. Hodge held a variety of assignments of increasing scope and responsibility including; management of clinical trial operations staff, leadership of the project management function, starting and running CVT's alliance management function, Project Team Leader for two development projects, and membership on the CVT Product Development Committee. In addition, Ms. Hodge was responsible for critical special assignments to support CVT's commercial launch, to improve financial reporting and forecasting accuracy for development projects and to plan for the study start up for CVT's largest clinical trial. Prior to CVT, Ms Hodge was a Global Clinical Team Leader at Quintiles, had Clinical Research Associate positions at Otsuka and Solvay, and had pharmacologist and development management responsibilities at the James Black Foundation in London. Ms. Hodge received her B.S. in Biology with Honors in Pharmacology from the University of Edinburgh, UK. .

Peter M. Kash. In September 2004, Mr. Kash co-founded Two River, a venture capital firm that specializes in the creation of new companies to acquire rights to commercially develop early stage biotechnology products. He serves the President and Chairman of Two River's managing member, Two River Group Management, LLC. Mr. Kash is also the President and Chairman of Riverbank, a broker dealer registered with the Financial Industry Regulatory Authority (FINRA (formerly NASD) broker dealer. From 1992 until 2004, Mr. Kash was a Senior Managing Director of Paramount BioCapital, Inc., a FINRA (formerly NASD) member broker dealer, specializing in conducting private financings for public and private development stage biotechnology companies as well as Paramount BioCapital Investments, LLC, a venture capital company. Mr. Kash also served as Director of Paramount Capital Asset Management, Inc. (the Paramount companies are collectively referred to as Paramount), the general partner of several biotechnology-related hedge funds and as member of the General Partner of the Orion Biomedical Fund, LP, a private equity fund. Mr. Kash currently serves as a member of the board of directors of several privately held biotechnology companies. Mr. Kash received his B.S. in Management Science from SUNY Binghamton and his M.B.A. in Banking and International Finance from Pace University. Mr. Kash is currently seeking his doctorate in Jewish education at Yeshiva University. Mr. Kash will devote only a portion of his time to the business of the Company.

Joshua A. Kazam. In September 2004, Mr. Kazam co-founded Two River and currently serves as Vice President and Director of Two River's managing member, Two River Group Management, LLC. Mr. Kazam also serves as an Officer and Director of Riverbank. From 1999 to 2004, Mr. Kazam was a Managing Director of Paramount, where he was responsible for ongoing operations of venture investments, and as the Director of Investment for the Orion Biomedical Fund, LP. Mr. Kazam currently serves as a director of Velcera, Inc. a publicly reporting company, and an officer or director of several privately held companies. Mr. Kazam is a graduate of the Wharton School of the University of Pennsylvania. He will devote only a portion of his time to the business of the Company.

Paul Mieyal, Ph.D., CFA Dr. Mieyal was appointed to serve as a member of the board of directors on September 11, 2007. Since 2006 Dr. Mieyal has served as a Vice President of Wexford Capital LLC, or Wexford, an SEC registered investment advisor with over $5 billion of assets under management located in Greenwich, CT. Prior to that, from 2000 to 2006 he was Vice President in charge of healthcare investments for Wechsler & Co., Inc., a private investment firm and registered broker-dealer. Dr. Mieyal serves as a Director of Danube Pharmaceuticals, Inc., Tigris Pharmaceuticals, Inc., Epiphany Biosciences, Inc., Interventional Spine, Inc., GlobeImmune, Inc. and Microbiogen Pty Ltd. Dr. Mieyal received his Ph.D. in pharmacology from New York Medical College, a B.A. in chemistry and psychology from Case Western Reserve University, and is a Chartered Financial Analyst.

David M. Tanen. In September 2004, Mr. Tanen co-founded Two River and currently serves as Vice President and Director of Two River's managing member, Two River Group Management, LLC. Mr. Tanen also serves as an Officer and Director of Riverbank. Prior to founding Two River, from October 1996 to September 2004, Mr. Tanen was served as a Director of Paramount. Mr. Tanen also served as member of the General Partner of the Orion Biomedical Fund, LP. Mr. Tanen currently serves as an officer or director of several privately held biotechnology companies. Mr. Tanen received his B.A. from The George Washington University and his J.D. from Fordham University School of Law. He will devote only a portion of his time to the business of the Company.

Scott L. Navins. Mr. Navins served as Treasurer of Old Nile since its inception. Mr. Navins is the Vice President of Finance at Two River Group, where he is responsible for all accounting, finance and control activities. Mr. Navins joined Two River Group in 2005. Prior to joining Two River, from 2004 to 2005 Mr. Navins was the Senior Controller at Westbrook Partners, where he managed the accounting for a $560 million real estate private equity fund, including financial and partner reporting, tax coordination, maintaining internal controls and overseeing a $300 million credit facility, among other things. Before that, from 2002 to 2004 Mr. Navins was a Senior Manager at Morgan Stanley, where he managed the accounting for a $2.4 billion real estate private equity fund. Prior to that Mr. Navins was an Associate in the Finance Group at BlackRock, Inc. and the controller for a high-tech venture capital fund. Mr. Navins graduated with honors from The George Washington University in 1993, where he earned a Bachelor of Accountancy degree. Mr. Navins passed the Uniform Certified Public Accounting examination in 1993. Mr. Navins will devote only a portion of his business time to the Company's business. Effective as of the closing of the Merger, Mr. Navins has been elected Treasurer of the Company.

Audit Committee

We do not currently have a separate Audit Committee. Our full board performs the functions normally designated to an Audit Committee. When acting in this capacity, the Board does not have a charter.

Compensation Committee

Our board of directors does not have a standing compensation committee responsible for determining executive and director compensation. Instead, the entire board of directors fulfills this function, and each member of the Board participates in the determination. Given the small size of the Company and its Board and the Company's limited resources, locating, obtaining and retaining additional independent directors is extremely difficult. In the absence of independent directors, the Board does not believe that creating a separate compensation committee would result in any improvement in the compensation determination process. Accordingly, the board of directors has concluded that the Company and its stockholders would be best served by having the entire board of directors act in place of a compensation committee. When acting in this capacity, the Board does not have a charter.

In considering and determining executive and director compensation, our board of directors reviews compensation that is paid by other similar public companies to its officers and takes that into consideration in determining the compensation to be paid to the Company’s officers. The board of directors also determines and approves any non-cash compensation to any employee. The Company does not engage any compensation consultants to assist in determining or recommending the compensation to the Company’s officers or employees.

6. EXECUTIVE COMPENSATION

Summary Compensation Table

The following table sets forth all of the compensation awarded to, earned by or paid to (i) each individual serving as our principal executive officer during our last completed fiscal year; and (ii) each other individual that served as an executive officer at the conclusion of the fiscal year ended December 31, 2006 and who received in excess of $100,000 in the form of salary and bonus during such fiscal year (collectively, the Named Executives).

Name and Principal Position	Year	Salary	Bonus (1)	Option Awards (2)	Non-Equity Incentive Plan Compensation	All Other Compensation	Total
Peter M. Strumph							
Chief Executive Officer	2006	$ -0-	$ -0-(3)	$ -0-	-0-	$ -0-	$ -0-
Daron Evans							
Chief Financial Officer	2006	$ -0-	$ -0-(4)	$ -0-	-0-	$ -0-	$ -0-
Jennifer Hodge							
Vice President, Development	2006	$ -0-	$ -0-(5)	$ -0-	-0-	$ -0-	$ -0-
Allan Gordon (6)							
Chief Executive Officer	2006	$ -0-	$ -0-	$ -0-	-0-	$ -0-	$ -0-
Joshua Kazam (7)							
President	2006	$ -0-	$ -0-	$ -0-	-0-	$ -0-	$ -0-
Geoffrey Alison (8)							
President	2006	$ -0-	$ -0-	$ -0-	-0-	$ -0-	$ -0-

(1) Our Named Executives are eligible for annual bonuses upon the successful achievement of agreed upon corporate and individual performance based milestones.

(2) Amount reflects the dollar amount recognized for financial statement reporting purposes for the fiscal year ended December 31, 2006 in accordance with SFAS 123R of stock option awards, and may include amounts from awards granted in and prior to fiscal year 2006.

(3) Mr. Strumph is entitled to an annual performance based bonus of up to $150,000 upon the successful completion of annual corporate and individual performance based milestones. See "*Employment Agreements, Termination of Employment and Change-in-Control Arrangements*."

(4) Mr. Evans is entitled to an annual performance based bonus of up to $38,344 upon the successful completion of annual corporate and individual performance based milestones. See "*Employment Agreements, Termination of Employment and Change-in-Control Arrangements*."

(5) Ms. Hodge is entitled to an annual performance based bonus of up to $51,000 upon the successful completion of annual corporate and individual performance based milestones. See "*Employment Agreements, Termination of Employment and Change-in-Control Arrangements*."

(6) Pursuant to the terms of the Separation Agreement, the Company will continue to pay Dr. Gordon his base salary, performance bonus and benefits until May 21, 2008. In addition, Old Nile granted Dr. Gordon options to purchase approximately 215,217 shares of Old Nile Common Stock following the closing of the Offering, which were exchanged at the effective time of the Merger into options to purchase 593,750 shares of Nile Common Stock. See *"Executive Compensation - Severance and Change of Control Agreements."*

(7) Joshua Kazam served as President of Old Nile until January 15, 2007. During this time, he did not receive any compensation.

(8) Geoffrey Alison served as President of SMI Products, Inc. until September 17, 2007, when he resigned and was replaced by Mr. Strumph, in connection with the Merger. During this time, Mr. Alison did not receive any compensation.

Compensation Policy. Our Company's executive compensation plan is based on attracting and retaining qualified professionals who possess the skills and leadership necessary to enable our Company to achieve earnings and profitability growth to satisfy our stockholders. We must, therefore, create incentives for these executives to achieve both Company and individual performance objectives through the use of performance-based compensation programs. No one component is considered by itself, but all forms of the compensation package are considered in total. Wherever possible, objective measurements will be utilized to quantify performance, but many subjective factors still come into play when determining performance.

Compensation Components. As an early-stage development company, the main elements of our compensation package consist of base salary, stock options and bonus.

Base Salary. As we continue to grow and financial conditions improve, these base salaries, bonuses and incentive compensation will be reviewed for possible adjustments. Base salary adjustments will be based on both individual and Company performance and will include both objective and subjective criteria specific to each executive's role and responsibility with the Company.

Executive Compensation under the Amended and Restated 2005 Stock Option Plan

Following the Merger, we have outstanding 3,404,013 stock options issued under our Amended and Restated 2005 Stock Option Plan at exercise prices ranging from $0.09 to $2.71 per share, of which 3,238,484 have been issued to the Named Executives.

Compensation of Directors

We currently do not compensate any non-employee member of our board of directors for serving as a board member, although we may, in our sole discretion, decide to compensate certain of our non-employee members of our board of directors in the future. No fees are paid to Peter Strumph, our Chief Executive Officer, for serving on our board of directors.

Employment Agreements, Termination of Employment and Change-in-Control Arrangements

Peter M. Strumph
Chief Executive Officer

On May 16, 2007, Old Nile entered into a three-year employment agreement with Mr. Strumph to serve as Old Nile's Chief Executive Officer, which agreement was assumed by SMI, and later by Nile, pursuant to the Merger. Effective as of the closing of the Merger, Mr. Strumph was appointed a director and Chief Executive Officer of the Company. Mr. Strumph will receive a base salary equal to $310,000 per annum. In addition, Mr. Strumph is eligible to receive an annual performance based bonus, or the Strumph Performance Bonus, of up to $150,000 upon the successful completion of annual corporate and individual milestones at an exemplary metric (i.e., ahead of schedule, under budget, etc.). Mr. Strumph is also entitled to a cash bonus upon the successful completion of a merger or acquisition transaction. Mr. Strumph may also receive a variable cash bonus upon a change of control depending upon the valuation ascribed to the company at the change of control. We have also agreed to pay for up to $1,000,000 of life insurance for Mr. Strumph. He will be entitled to up to four weeks of vacation per year and may participate in Company sponsored benefit plans (i.e., health, dental, etc.).

We have granted to Mr. Strumph stock options or the Strumph Employment Options, to purchase 1,876,491 shares of Nile Common Stock. Of the Strumph Employment Options, 989,572 shall vest, if at all, and become exercisable in three equal installments on the day before each anniversary of Mr. Strumph's employment agreement. In addition, up to 886,919 options, or the Strumph Performance Options, shall vest, if at all, and become exercisable upon the successful completion of annual corporate and individual milestones in an exemplary manner (e.g., ahead of schedule, under budget, etc.). The options shall be governed by the Company's 2005 Stock Option Plan and are exercisable at a $2.71 per share. Additionally, in the event that the Company acquires by license, acquisition or otherwise, an additional biotechnology product or series of biotechnology products for development that is first identified by Mr. Strumph, then we shall grant to Mr. Strumph options, or the Strumph Technology Options, to purchase additional shares of Nile Common Stock based upon the stage of development of the licensed technology. The Strumph Technology Options shall be exercisable for five years at an exercise price equal to the fair market value of the Nile Common Stock on the date of the grant.

In the event that Mr. Strumph's employment is terminated as a result of his death or disability, the Company will pay him or his estate (a) his base salary for a period of six months thereafter; (b) expense reimbursement amounts through the date of his death or disability, (c) any accrued but unpaid performance bonus for a year prior to the year in which the Executive's employment is terminated; (d) a *pro rata* performance bonus for the year in which the Executive's employment is terminated; and (e) all Strumph Employment Options shall vest immediately and become exercisable. In the event that Mr. Strumph's employment is terminated by the Company for cause or by Mr. Strumph other than for good reason, then the Company shall pay to him his base salary, accrued but unpaid Performance Bonus and expense reimbursement through the date of his termination. He shall have no further entitlement to any other compensation or benefits from the Company except as provided in the Company's compensation and benefit plans. All stock options, other than any Strumph Technology Options, that have not previously vested shall expire immediately. In the event that Mr. Strumph's employment is terminated upon a change of control, by Mr. Strumph for good reason, or by the Company for any other reason then the Company will (a) continue to pay to Mr. Strumph his base salary, Performance Bonus (based on the assumption that a realistic metric is achieved) and benefits for a period of one year following such termination; (b) pay Mr. Strumph any accrued but unpaid Performance Bonus for the year in which the Executive's employment is terminated; (c) pay Mr. Strumph any expense reimbursement amounts owed through the date of termination; and (d) all unvested Strumph Employment Options shall vest and become exercisable immediately and shall remain exercisable for a period of not less than five years.

Daron Evans
Chief Financial Officer

On January 19, 2007, Old Nile entered into a three-year employment agreement with Daron Evans, to serve as our Chief Operating Officer, which agreement was assumed by SMI, and later by Nile, pursuant to the Merger. Mr. Evans received a $25,000 signing bonus and Nile agreed to reimburse him for qualified moving expenses incurred in connection with his relocation to California. Mr. Evans's employment agreement was amended on August 28, 2007. Effective as of the closing of the Merger, Mr. Evans was appointed as Chief Financial Officer of the Company. Mr. Evans will receive a base salary equal to $175,000 per annum. In addition, Mr. Evans is eligible to receive an annual performance based bonus, or the Evans Performance Bonus, of up to $38,344 based upon the successful completion of annual corporate and individual milestones at an exemplary metric (i.e., ahead of schedule, under budget, etc.). The Company has also agreed to pay for up to $1,000,000 of life insurance for Mr. Evans. He will be entitled to up to three weeks of vacation per year and may participate in Company sponsored benefit plans (i.e., health, dental, etc.).

Pursuant to the amendment to Mr. Evans' employment contract, Old Nile paid Mr. Evans a bonus in the amount of $64,969. A portion of this bonus, $47,785, was used to satisfy a loan from Old Nile to Mr. Evans.

We have granted to Mr. Evans stock options, or the Evans Employment Options, to purchase 528,354 shares of Nile Common Stock. Of the Evans Employment Options, 239,896 shall vest, if at all, and become exercisable in three equal installments on the day before each anniversary of Mr. Evans's employment agreement. In addition, up to 288,458 options, or the Evans Performance Options, shall vest, if at all, and become exercisable upon the successful completion of annual corporate and individual milestones in an exemplary manner (e.g., ahead of schedule, under budget, etc.). The options granted to Mr. Evans shall be governed by the Company's 2005 Stock Option Plan and are exercisable at a $2.71 per share. Additionally, in the event that the Company acquires by license, acquisition or otherwise, an additional biotechnology product or series of biotechnology products for development that is first identified by Mr. Evans, then we shall grant to Mr. Evans options, or the Evans Technology Options, to purchase additional shares of Nile Common Stock based upon the stage of development of the licensed technology. The Evans Technology Options shall be exercisable for five years at an exercise price equal to the fair market value of the Nile Common Stock on the date of the grant.

In the event that Mr. Evans' employment is terminated as a result of his death or disability, the Company will pay him or his estate (a) his base salary for a period of six months thereafter; (b) expense reimbursement amounts through the date of his death or disability, (c) any accrued but unpaid Performance Bonus for a year prior to the year in which the Executive's employment is terminated; (d) a *pro rata* performance bonus for the year in which the Executive's employment is terminated; and (e) all Evans Employee Options shall vest immediately and become exercisable. In the event that Mr. Evans' employment is terminated by the Company for cause or by Mr. Evans other that for good reason, then the Company shall pay to him his base salary, accrued but unpaid Performance Bonus and expense reimbursement through the date of his termination. He shall have no further entitlement to any other compensation or benefits from the Company except as provided in the Company's compensation and benefit plans. All Evans Employee Options and Evans Performance Options that have not previously vested shall expire immediately. In the event that Mr. Evans employment is terminated upon a change of control, by Mr. Evans for good reason (which shall include relocation outside of the San Francisco metropolitan area), or by the Company for any other reason then that the Company will (a) continue to pay to Mr. Evans his base salary, performance bonus and benefits for a period of one year following such termination; (b) pay Mr. Evans any accrued but unpaid performance bonus for the year prior to the year in which the Executive's employment is terminated; (c) pay Mr. Evans any expense reimbursement amounts owed through the date of termination; and (d) all unvested stock options shall vest and become exercisable immediately and shall remain exercisable for a period of not less than five years.

Jennifer Hodge
Vice President, Development

On August 8, 2007, Old Nile entered into a Letter Agreement, or the Hodge Letter, with Ms. Jennifer Hodge to serve as our Vice President, Development, which Letter Agreement was assumed by SMI, and later by Nile, pursuant to the Merger. Ms. Hodge commenced her employment on August 30, 2007. Effective as of the closing of the Merger, Ms. Hodge was appointed Vice President, Development. Ms. Hodge will be employed at-will and will receive an annual base salary equal to $170,000, and will be eligible to receive an annual discretionary bonus of up to 30% of her base salary based upon the successful accomplishment of individual and corporate performance goals to be agreed upon annually between Ms. Hodge and our Chief Executive Officer, which amount shall be pro-rated for the year 2007. Ms. Hodge will also be entitled to up to four weeks of vacation per year and may participate in company sponsored benefit plans (i.e., health, dental, etc.).

We also granted Ms. Hodge stock options pursuant to the Company's 2005 Stock Option Plan, or the Hodge Employment Options, to purchase 239,896 shares of Nile Common Stock at an exercise price equal to $2.71. One quarter of the Hodge Employment Options shall vest and become exercisable on the first anniversary of the Hodge Letter. Thereafter, the Hodge Employment Options shall vest in equal amounts and become exercisable on the last day of each calendar month until all remaining Hodge Employment Options are fully vested and exercisable. Additionally, in the event that the Company acquires by license, acquisition or otherwise, an additional biotechnology product or series of biotechnology products for development that is first identified by Ms. Hodge, then Nile shall grant to Ms. Hodge options, or the Hodge Technology Options, to purchase additional shares of Nile Common Stock based upon the stage of development of the licensed technology. The Hodge Technology Options shall be exercisable for five years at an exercise price equal to the fair market value of the Nile Common Stock on the date of the grant.

Executive Bonus Compensation

As described above, Mr. Strumph and Mr. Evans are annually eligible for a proportionate share of their respective Performance Bonuses based upon the assigned weight of agreed upon annual corporate or individual performance milestones , or the Performance Milestones, to be granted upon completion of such Performance Milestones. These executives will receive 100% of their contractual Performance Bonus for Performance Milestones achieved at a "Baseline" metric and 120% of such contractual Performance Bonus for Performance Milestones achieved at an "Exemplary" metric. If Performance Milestones are achieved at a "Pessimistic" metric, the executives will receive 80% of such contractual Performance Bonus. The Performance Milestones shall be amended each subsequent year during the term of their respective employment agreements upon the mutual agreement of our board of directors and the executive no later than 30 days following the beginning of such year.

Separately, Ms. Hodge will be eligible to receive an annual discretionary bonus of up to 30% of her base salary based upon the successful accomplishment of individual and corporate performance goals to be agreed upon annually between Ms. Hodge and our Chief Executive Officer, which amount shall be pro-rated for the year 2007.

Aggregated Option Exercises in Last Fiscal Year and Fiscal Year End Option Values

No options to purchase shares of Nile Common Stock were exercised by any of the Named Executives during the fiscal year ended December 31, 2006. For a discussion of option arrangements relating to our Named Executive Officers, see "*Employment Agreements, Termination of Employment and Change-in-Control Arrangements*."

Severance and Change of Control Arrangements

See "*Employment Agreements*" above for a description of the severance and change of control arrangement with members of management.

On August 10, 2007, Old Nile entered into a Separation Agreement with Dr. Allan Gordon, a former executive of Nile. Pursuant to the terms of the Separation Agreement, the Company will continue to pay Dr. Gordon his base salary, performance bonus and benefits until May 21, 2008. In addition, Old Nile granted options to Dr. Gordon to purchase 215,215 shares of Old Nile Common Stock following the closing of the Offering, which converted at the time of the Merger into options to purchase 593,743 Nile Shares at an exercise price equal to $2.71 per share. The Company will also provide the executive with limited "piggy-back" registration rights and will reimburse Dr. Gordon for attorney's fees in an amount up to $12,500. In addition, Dr. Gordon agreed to release Old Nile from any claims arising out of Dr. Gordon's employment with Nile.

Our board of directors, or a committee thereof, serving as plan administrator of our 2005 Stock Option Plan, has the authority pursuant to Section 6.3 of the Plan to provide for accelerated vesting of the options granted to our named executive officers and any other person in connection with changes of control.

7. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Old Nile was incorporated in August 2005 by Two River. Messrs. Peter M. Kash, Joshua A. Kazam and David M. Tanen, each a director and substantial stockholder of Nile, are the managing members of Two River. Mr. Tanen also serves as our Secretary, and Mr. Scott Navins, the Vice President of Finance for Two River, serves as our Treasurer. Additionally, certain employees of Two River, who are also stockholders of Nile, perform substantial operational activity for us, including without limitation, financial, clinical and regulatory activities.

Messrs. Kash, Kazam and Tanen are also officers and directors of Riverbank. Riverbank acted as placement agent on a best-efforts basis for Old Nile in connection with the sale of shares of Old Nile Common Stock on September 11, 2007. Riverbank did not receive any selling commission for its services in connection with such services, but received a non-accountable expense allowance of $100,000 for its expenses incurred in connection with its service. Nile also agreed to indemnify Riverbank against any claims that may arise out of the services provided in connection with the Offering.

On July 24, 2007, Old Nile issued an 8% Promissory Note in the aggregate principal amount of $1.5 million to Iota Investors LLC, an affiliate of Wexford Capital LLC, which note was repaid in full on September 11, 2007. See *"Item 2.01—Recent Financings."* Wexford is a substantial stockholder of Nile, and Dr. Paul Mieyal, one of our directors, is a Vice President of Wexford.

8. DESCRIPTION OF SECURITIES

The certificate of incorporation of Nile authorizes it to issue 110 million shares of capital stock, par value $0.001 per share comprised of 100 million shares of Nile Common Stock, and 10 million shares of preferred stock, par value $0.001 per share.

Following the Merger, we will have approximately: (i) 24,099,716 shares of Nile Common Stock issued, (ii) options to purchase 3,404,103 shares of Nile Common Stock at exercise prices ranging from $0.09 to $2.71 per share, and (iii) warrants to purchase 168,337 shares of Nile Common Stock. There are no shares of preferred stock issued or outstanding.

The holders of Nile Common Stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders and do not have cumulative voting rights. Upon our liquidation, dissolution or winding, holders of Nile Common Stock will be entitled to share ratably in all of our assets that are legally available for distribution, after payment of all debts and other liabilities. The holders of Nile Common Stock have no preemptive, subscription, redemption or conversion rights.

Holders of Nile Common Stock are entitled to receive such dividends, as the board of directors may from time to time declare out of funds legally available for the payment of dividends. The Company seeks growth and expansion of its business through the reinvestment of profits, if any, and does not anticipate that it will pay dividends in the foreseeable future.

Authority to Issue Stock

Our board of directors has the authority to issue the authorized but unissued shares of Nile Common Stock without action by the shareholders. The issuance of such shares would reduce the percentage ownership held by current shareholders.

Our board of directors also has the authority to issue up to 10 million shares of preferred stock, none of which are issued or currently outstanding. The board of directors has the authority to fix and determine the relative rights and preferences of preferred shares, as well as the authority to issue such shares, without further stockholder approval. As a result, the board of directors could authorize the issuance of a series of preferred stock that is senior to the Nile Common Stock and that would grant to holders preferred rights to our assets upon liquidation, the right to receive dividend, additional registration rights, anti-dilution protection, the right to the redemption to such shares, together with other rights, none of which will be afforded holders of Nile Common Stock. See *"Risk Factors - There may be additional issuances of shares of blank check preferred stock in the future."*

PART II.

1. MARKET INFORMATION

Nile Common Stock is quoted on the OTC Bulletin Board, or the OTCBB, under the symbol "SPDU.OB." We expect to change our symbol. Set forth below are the high and low bid prices for Nile Common Stock for the fiscal years ended December 31, 2005 and December 31, 2006, and the period ended June 30, 2007. Although Nile Common Stock is quoted on the OTCBB, it has traded sporadically with no real volume. Consequently, the information provided below my not be indicative of Nile Common Stock price under different conditions.

SMI HISTORICAL SHARE PRICE CHART

Quarter ended	High Bid	Low Bid
March 31, 2005	6.00	5.10
June 30, 2005	6.00	5.00
September 30, 2005	NA	NA
December 30, 2005	6.50	4.10
March 31, 2006	6.90	3.50
June 30, 2006	NA	NA
September 29, 2006	7.50	3.50
December 29, 2006	6.50	3.50
March 30, 2007	3.50	0.77
June 29, 2007	2.05	2.00

All prices listed herein reflect inter-dealer prices, without retail mark-up, mark-down or commissions, and may not represent actual transactions.

Since our inception, we have not paid any dividends on the Nile Common Stock, and we do not anticipate that we will pay any dividends in the foreseeable future. We intend to retain any future earnings for use in our business. At September 17, 2007, we had approximately 215 shareholders of record.

2. LEGAL PROCEEDINGS

We are not currently involved in any material legal proceedings.

3. CHANGES IN AND DISAGREEMENT WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

On or about October 31, 2006, SMI dismissed its former accountant, Amisano Hanson Chartered Accountants, Vancouver, Canada, as our principal accountant effective October 31, 2006. Amisano Hanson had served SMI since 1996.

On or about September 21, 2007, and effective upon the completion of the Merger, Old Nile dismissed Paritz & Co., Hackensack, New Jersey, as the our principal accountants effective as of September 21, 2007.

Under Item 304 of Regulation S-K, the reasons for the changes in the accountants listed above is dismissal, not resignation or declining to stand for re-election. During the two most recent fiscal years and the interim period through the date of the dismissal, there were no disagreements with any of the accountants listed above on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to these accountants satisfaction, would have caused the accountants to make reference to the subject matter of the disagreements in connection with its reports. During the two most recent fiscal years through the date of dismissal, the reports of these accountants did not contain any adverse opinion or disclaimer of opinion, or were modified as to uncertainty, audit scope, or accounting principles other than the issuance of a "going concern" opinion with respect to its reports issued with respect to the Company's financial statements dated December 31, 2006, and December 31, 2005, respectively.

The decision to change principal accountants was approved by the board of directors. On September 17, 2007, the Company engaged Hays & Company, LLP as successor to Partitz & Co. Hays & Company, LLP was Old Nile's principal accountants for its fiscal year ending December 31, 2006 and the six months ended June 30, 2007. During the Company's two most recent fiscal years or subsequent interim period, the Company has not consulted with the entity of Hays & Company LLP regarding the application of accounting principles to a specific transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Nile's financial statements, nor did the entity of Hays & Company, L.L.P. provide advice to Nile, either written or oral, that was an important factor considered by Nile in reaching a decision as to the accounting, auditing or financial reporting issue. Further, during Nile's two most recent fiscal years or subsequent interim period, the Company has not consulted the entity of Hays & Company, L.L.P. on any matter that was the subject of a disagreement or a reportable event.

4. RECENT ISSUANCES OF UNREGISTERED SECURITIES BY NILE

The following summarizes all sales of unregistered securities by Old Nile since inception in August 2005. Each issued and outstanding share of Old Nile Common Stock converted to 2.758838 shares of Nile Common Stock as of the Closing of the Merger.

In August 2005, in connection with Old Nile's incorporation, Old Nile issued an aggregate of 5,000,000 shares of Old Nile Common Stock for aggregate consideration of $5,000. 500,000 shares were returned to treasury and subsequently issued to Mayo in January 2006, as partial consideration for the Mayo License Agreement granting us rights to commercially develop CD-NP.

In February 2006, Old Nile issued options to purchase 25,000 shares of Old Nile Common Stock at an exercise price of $0.25 per share to each of two members of Old Nile's Scientific Advisory Board. The options expire in February 2011.

On March 28, 2006, Old Nile issued the 6% Notes to certain qualified investors. See *"Item 2.01—Recent Financings."*

On July 24, 2007, Old Nile issued $1,500,000 in face amount of an 8% Promissory Note, which note was repaid on September 11, 2007. See *"Item 2.01—Recent Financings."*

On August 6, 2007, Old Nile issued 126,904 shares of Old Nile Common Stock to Dr. Cesare Casagrande as partial payment for the 2NTX-99 License Agreement. See *"Item 2.01—Recent Financings."*

As a condition to the closing of the Merger, on September 11, 2007, Old Nile completed a private placement offering whereby it received gross proceeds of approximately $19,974,747 through the sale of 2,522,064 shares of Old Nile Common Stock in a private placement to certain qualified investors. Old Nile also issued 23,009 shares of Nile Common Stock to Mayo pursuant to the terms of the Mayo License Agreement. See *"Item 2.01—Recent Financings."*

On September 17, 2007, we granted to Mr. Peter Strumph stock options to purchase 1,876,491 shares of Nile Common Stock. See "*Employment Agreements, Termination of Employment and Change-in-Control Arrangements."*

On September 17, 2007, we granted to Mr. Daron Evans stock options to purchase 528,354 shares of Nile Common Stock. See "*Employment Agreements, Termination of Employment and Change-in-Control Arrangements."*

On September 17, 2007, we granted to Ms. Jennifer Hodge stock options to purchase 239,896 shares of Nile Common Stock. See "*Employment Agreements, Termination of Employment and Change-in-Control Arrangements."*

On September 17, 2007, we granted to Dr. Allan Gordon stock options to purchase 593,743 shares of Nile Common Stock. . See "*Employment Agreements, Termination of Employment and Change-in-Control Arrangements."*

On September 17, 2007, we also issued 494,900 shares of Nile Common Stock to Fountainhead Capital, upon the conversion of $168,573 of convertible promissory notes, and accrued interest. See *"Item 2.01- Completion of Acquisition or Disposition of Assets.*"

Except as noted above, the sales of the securities identified above were made pursuant to privately negotiated transactions that did not involve a public offering of securities and, accordingly, we believe that these transactions were exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof and rules promulgated thereunder. In addition, we believe that the 8% Promissory Note is commercial paper and is exempt from the registration requirements of the Securities Act under Section 3(a)3 thereof. Each of the above-referenced investors in our stock represented to us in connection with their investment that they were "accredited investors" (as defined by Rule 501 under the Securities Act) and were acquiring the shares for investment and not distribution, that they could bear the risks of the investment and could hold the securities for an indefinite period of time. The investors received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration or an available exemption from such registration. All of the foregoing securities are deemed restricted securities for purposes of the Securities Act.

Recent Issuances of Securities by SMI

The issuance of the SMI Common Stock to the shareholders of Old Nile in the Merger was exempt from registration under the Securities Act pursuant to Section 4(2) thereof. Nile has made this determination based on the representations of the Old Nile shareholders and investors which included, in pertinent part, that such persons were either "accredited investors" or represented by a purchaser representative, within the meaning of Rule 501 of Regulation D promulgated under the Securities Act, that such persons were acquiring the Nile Common Stock, and the shares of SMI Common Stock issued to them pursuant to the Merger, for investment purposes for their own respective accounts and not as nominees or agents, and not with a view to the resale or distribution thereof in violation of the Securities Act, and that each person understood that the shares of the SMI Common Stock issued in the Merger, may not be sold or otherwise disposed of without registration under the Securities Act or an applicable exemption therefrom.

5. INDEMNIFICATION OF OFFICERS AND DIRECTORS

Pursuant to our certificate of incorporation and bylaws, we may indemnify an officer or director who is made a party to any proceeding, because of his position as such, to the fullest extent authorized by Delaware General Corporation Law, as the same exists or may hereafter be amended. In certain cases, we may advance expenses incurred in defending any such proceeding.

To the extent that indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling our company pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable. If a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by a director, officer or controlling person of our company in the successful defense of any action, suit or proceeding) is asserted by any of our directors, officers or controlling persons in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of that issue.

ITEM 4.01 CHANGES IN REGISTRANT'S CERTIFYING ACCOUNTANT.

See "Information Required Pursuant to Form 10-SB" II(3) "*Changes In and Disagreements with Accountants*," which discussion is incorporated herein by reference.

ITEM 5.01 CHANGES IN CONTROL OF REGISTRANT.

Please see the discussion of "*Closing of Merger*" and "*Recent Financings*" in Item 2.01, which discussion is incorporated herein by reference.

ITEM 5.02 DEPARTURE OF DIRECTORS OR PRINCIPAL OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF PRINCIPAL OFFICERS.

See "Information Required Pursuant to Form 10-SB" item 5 "*Directors and Executive Officers, Promoters and Control Persons*," which discussion is incorporated herein by reference.

ITEM 5.03 AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGE IN FISCAL YEAR.

On September 17, 2007, the Company filed a Certificate of Ownership with the Secretary of State of the State of Delaware pursuant to which Old Nile, a wholly-owned subsidiary of SMI by virtue of the Merger, merged with and into SMI with SMI remaining as the surviving corporation to the merger (the "Short-Form Merger"). In connection with the Short-Form Merger, and as set forth in the Certificate of Ownership, SMI changed its corporate name to "Nile Therapeutics, Inc." The Certificate of Ownership is filed as Exhibit 3.1 to this current report.

ITEM 5.06 CHANGE IN SHELL COMPANY STATUS.

As described in Item 2.01 above, which is incorporated by reference into this Item 5.06, we ceased being a shell company (as defined in Rule 12b-2 under the Exchange Act of 1934, as amended) upon completion of the Merger.

PART III.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.

(a) As a result of the Merger described in Item 2.01, the registrant is filing Nile's audited financial information as Exhibit 99.2 to this current report.

(b) Pro forma financial information has not been included, as it would not be materially different from the financial information of Nile as referenced above.

(c) Exhibits.

Exhibit	Description
2.1	Agreement and Plan of Merger, by and among SMI Products, Inc., Nile Merger Sub, Inc., and Nile Therapeutics, Inc. dated as of August 15, 2007. [1]
3.1	Articles of Incorporation of SMI Products, Inc.[2]
3.2	By-laws of SMI Products, Inc.[2]
4.1	Specimen Common Stock Certificate.
10.1	Form of Nile Therapeutics, Inc. Common Stock Purchase Warrant.
10.2	Employment Agreement between Nile Therapeutics, Inc. and Peter M. Strumph dated May 11, 2007.
10.3	Employment Agreement between Nile Therapeutics, Inc. and Daron Evans dated January 19, 2007.
10.4	Amendment No. 1 to Employment Agreement between Nile Therapeutics, Inc. and Daron Evans dated August 19, 2007.
10.5	Letter Agreement between Nile Therapeutics, Inc. and Jennifer L. Hodge, dated August 31, 2007.
10.6	License Agreement between The Mayo Foundation for Medical Education and Research and Nile Therapeutics, Inc., dated January 20, 2006.*
10.7	License Agreement between Nile Therapeutics, Inc. and Dr. Cesare Casagrande, dated August 6, 2007.*
10.8	Lease Agreement between Nile Therapeutics, Inc. and Seagate Telegraph Associates, LLC for office space located at 2850 Telegraph Avenue, Suite #310, Berkeley, CA 94705 dated March 21, 2007.
10.9	Amended and Restated 2005 Stock Option Plan.
10.10	Form of Stock Option Agreement.
10.11	Form of Incentive Stock Option Agreement.

10.12 Separation Agreement and General Release between Nile Therapeutics, Inc. and Allan Gordon dated August 10, 2007.

16.1 Letter from Paritz & Co dated September 20, 2007 regarding change in certifying accountants.

16.2 Letter from Amisano Hanson Chartered Accountants dated February 5, 2007, regarding change in certifying accountants.[3]

23.1 Consent from Hays & Company LLP.

99.1 Press Release dated September 17, 2007.

99.2 Audited financial statements of Nile Therapeutics, Inc. for the period ended June 30, 2007 (pro forma financial information is not included, as the pro-forma information would not be materially different from Nile's historical financial statements).

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[1] Incorporated by reference from SMI's current report on Form 8-K filed with the Commission dated August 18, 2007, SEC file no. 333-55166.
[2] Incorporated by reference from SMI's current report on Form 8-K filed with the Commission dated February 9, 2007, SEC file no. 333-55166.
[3] Incorporated by reference from SMI's current report on Form 8-K filed with the Commission dated December 8, 2006, SEC file no. 333-55166.
[*] Confidential treatment requested as to certain portions of this exhibit. Such portions have been redacted and filed separately with the SEC.

GLOSSARY OF TERMS

The following are definitions of certain technical terms used in this report and commonly used in the pharmaceutical and biotechnology industries.

agonist	A drug that can combine with a receptor on a cell to produce a physiological reaction.
atherothromboticg	The formation of a clot in an artery that is characterized by a thickening and fatty degeneration of that vessel's inner coat.
atherosclerotic	A thickening and hardening of the artery walls characterized by fatty deposits in and the formation of scar-like tissue (fibrosis) of the inner layer of the arteries.
cardiovascular	Of, relating to, or involving the heart and blood vessels.
chimeric	Of or related to an individual, organ, or part consisting of pieces of diverse genetic constitution.
claudication	Cramping pain and weakness in the legs and especially the calves on walking that disappears after rest and is usually associated with inadequate blood supply to the muscles.
natriuretic	Of or related to the excretion of sodium in the urine.
congestive heart failure	Heart failure in which the heart is unable to maintain adequate circulation of blood in the tissues of the body or to pump out the venous blood returned to it by the venous circulation resulting in an accumulation of blood in the vessels and fluid in the body tissues.
diabetic nephropathy	Kidney disease and resultant kidney function impairment due to the long-standing effects of diabetes on the glomeruli (capillary blood vessels in the kidney which are actively involved in the filtration of the blood). Features include increased urine protein and declining kidney function. Severe diabetic nephropathy can lead to kidney failure and end-stage renal disease.
equimolar	Of or relating to an equal number of moles. A mole is a unit of measurement that is determined as "6.2 x 10^{23} atoms or molecules of a substance.
hypotension	Abnormally low pressure of the blood.
in vitro	Outside the living body and in an artificial environment.
in vivo	In the living body of a plant or animal.
mean arterial pressure	A measurement that takes account of pumped blood flow in the arteries and is the best measure of the pressure of blood pumped to an organ.
metabolic disease	An illness resulting from the body's malfunction in the chemical changes in living cells by which energy is provided for vital processes and activities and new material is assimilated.
microvascular disease	An illness related to or constituting the part of the circulatory system made up of minute vessels.
nitric oxide	Synthesized within cells by NO synthase, NO relaxes smooth muscles and has been implicated almost universally in the functioning of a variety of cellular processes.
nitric oxide-donating properties	The ability to release nitric oxide.
pathological	Altered or caused by disease

peptide	Two or more amino acids formed by combination of the amino group of one acid with the carboxyl group of another.
pharmacodynamics	A branch of pharmacology dealing with the reactions between drugs and living systems.
pharmacokinetics	The study of the bodily absorption, distribution, metabolism, and excretion of drugs.
pharmacologic actions	The properties and reactions of drugs especially with relation to their therapeutic value.
platelet aggregation	The clumping of many small blood-based bodies that generally assists in blood clotting by adhering to each other and the tissues lining the blood vessels (epithelium).
prostacyclin	A cyclic fatty acid that inhibits aggregation of platelets, and dilates blood vessels.
prothrombotic	Of or related to the promotion of blood clot formation.
renal	Relating to, involving, affecting, or located in the region of the kidneys.
synthetic	Of, relating to, or produced by chemical or biochemical synthesis; produced artificially.
thrombotic	Of or related to blood clot formation.
thromboxane	A substance that is produced by platelets, causes constriction of vascular and bronchial smooth muscle, and promotes blood clotting.
vasculature	The disposition or arrangement of blood vessels in an organ or part of the body.
vasodilator	An agent that widens the cavity of the blood vessels.

SIGNATURE

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

NILE THERAPEUTICS, INC.

Date: September 17, 2007

By: /s/ Peter M. Strumph

Peter M. Strumph
Chief Executive Officer

Exhibit 4.1

Incorporated under the laws of the State of Delaware

-[CERT #]- *[NUMBER OF SHARES]*

NILE THERAPEUTICS, INC.

COMMON STOCK
100,000,000 Authorized

SPECIMEN

NILE THERAPEUATICS, INC.

Daron Evans, CFO

Peter M. Strumph, CEO

Par Value $.001

Exhibit 10.1

THIS WARRANT AND THE SHARES OF COMMON STOCK ISSUED UPON ITS EXERCISE ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER SET FORTH IN SECTION 5 OF THIS WARRANT

Warrant No. [ ]

Number of Shares: [ ] (subject to adjustment)

Date of Issuance: [ ], 200[ ]

Original Issue Date (as defined in subsection 2(a)): [ ], 200[ ]

Nile Therapeutics, Inc.

Common Stock Purchase Warrant

(Void after [ ], 201[ ])

Nile Therapeutics, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that **[ ]**, or its registered assigns (the "Registered Holder"), is entitled, subject to the terms and conditions set forth below, to purchase from the Company, at any time or from time to time on or after **[ ]**, 200**[ ]** and on or before 5:00 p.m. (Eastern time) on **[ ]**, 201**[ ]** (the "Exercise Period"), **[ ]** shares of Common Stock, $0.001 par value per share, of the Company ("Common Stock"), at a purchase price of $**[ ]** per share. The shares purchasable upon exercise of this Warrant, and the purchase price per share, each as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Shares" and the "Purchase Price," respectively. This Warrant is one of a series of Warrants issued by the Company, all with the same Original Issue Date and of like tenor, except as to the number of Warrant Shares subject thereto (the "Company Warrants").

1. Exercise.

(a) Exercise. The Registered Holder may, at its option, elect to exercise this Warrant, in whole or in part and at any time or from time to time during the Exercise Period, by surrendering this Warrant, with the purchase form appended hereto as Exhibit I duly executed by or on behalf of the Registered Holder, at the principal office of the Company, or at such other office or agency as the Company may designate, accompanied by payment in full, in lawful money of the United States, of the Purchase Price payable in respect of the number of Warrant Shares purchased upon such exercise. A facsimile signature of the Registered Holder on the purchase form shall be sufficient for purposes of exercising this Warrant, provided that the Company receives the Registered Holder's original signature with three (3) business days thereafter.

(b) Exercise Date. Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in subsection 1(a) (the "Exercise Date"). At such time, the person or persons in whose name or names any certificates for Warrant Shares shall be issuable upon such exercise as provided in subsection 1(c) below shall be deemed to have become the holder or holders of record of the Warrant Shares represented by such certificates.

(c) Issuance of Certificates. As soon as practicable after the exercise of this Warrant in whole or in part, and in any event within 10 days thereafter, the Company, at its expense, will cause to be issued in the name of, and delivered to, the Registered Holder, or as the Registered Holder (upon payment by the Registered Holder of any applicable transfer taxes) may direct:

(i) a certificate or certificates for the number of full Warrant Shares to which the Registered Holder shall be entitled upon such exercise plus, in lieu of any fractional share to which the Registered Holder would otherwise be entitled, cash in an amount determined pursuant to Section 3 hereof; and

(ii) in case such exercise is in part only, a new warrant or warrants (dated the date hereof) of like tenor, calling in the aggregate on the face or faces thereof for the number of Warrant Shares equal (without giving effect to any adjustment therein) to the number of such shares called for on the face of this Warrant minus the number of Warrant Shares for which this Warrant was so exercised.

2. Adjustments.

(a) Adjustment for Stock Splits and Combinations. If the Company shall at any time or from time to time after the date on which this Warrant was first issued (or, if this Warrant was issued upon partial exercise of, or in replacement of, another warrant of like tenor, then the date on which such original warrant was first issued) (the "Original Issue Date") effect a subdivision of the outstanding Common Stock, the Purchase Price then in effect immediately before that subdivision shall be proportionately decreased and the number of shares of Common Stock issuable upon exercise of this Warrant shall be increased in proportion to the increase in shares of Common Stock outstanding. If the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Purchase Price then in effect immediately before the combination shall be proportionately increased and the number of shares of Common Stock issuable upon exercise of this Warrant shall be decreased in proportion to the decrease in shares of Common Stock outstanding. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Adjustment for Certain Dividends and Distributions. In the event the Company at any time, or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Purchase Price then in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Purchase Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Purchase Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Purchase Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(c) Adjustments for Other Dividends and Distributions. In the event the Company at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company (other than shares of Common Stock) or in cash or other property (other than regular cash dividends paid out of earnings or earned surplus, determined in accordance with generally accepted accounting principles), then and in each such event provision shall be made so that the Registered Holder shall receive upon exercise hereof, in addition to the number of shares of Common Stock issuable hereunder, the kind and amount of securities of the Company, cash or other property which the Registered Holder would have been entitled to receive had this Warrant been exercised on the date of such event and had the Registered Holder thereafter, during the period from the date of such event to and including the Exercise Date, retained any such securities receivable during such period, giving application to all adjustments called for during such period under this Section 2 with respect to the rights of the Registered Holder.

(d) Adjustment for Reorganization. If there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Company in which the Common Stock is converted into or exchanged for securities, cash or other property (other than a transaction covered by subsections 2(a), 2(b) or 2(c)) (collectively, a "Reorganization"), then, following such Reorganization, the Registered Holder shall receive upon exercise hereof the kind and amount of securities, cash or other property which the Registered Holder would have been entitled to receive pursuant to such Reorganization if such exercise had taken place immediately prior to such Reorganization. Notwithstanding the foregoing sentence, if (x) there shall occur any Reorganization in which the Common Stock is converted into or exchanged for anything other than solely equity securities, and (y) the common stock of the acquiring or surviving company is publicly traded, then, as part of such Reorganization, (i) the Registered Holder shall have the right thereafter to receive upon the exercise hereof such number of shares of common stock of the acquiring or surviving company as is determined by multiplying (A) the number of shares of Common Stock subject to this Warrant immediately prior to such Reorganization by (B) a fraction, the numerator of which is the Fair Market Value (as defined below) per share of Common Stock as of the effective date of such Reorganization, and the denominator of which is the fair market value per share of common stock of the acquiring or surviving company as of the effective date of such transaction, as determined in good faith by the Board (using the principles set forth in subsections 2(d)(i) and 2(d)(ii) to the extent applicable), and (ii) the exercise price per share of common stock of the acquiring or surviving company shall be the Purchase Price divided by the fraction referred to in clause (B) above. In any such case, appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the provisions set forth herein with respect to the rights and interests thereafter of the Registered Holder, to the end that the provisions set forth in this Section 2 (including provisions with respect to changes in and other adjustments of the Purchase Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities, cash or other property thereafter deliverable upon the exercise of this Warrant. The Fair Market Value per share of Common Stock shall be determined as follows:

(1) If the Common Stock is listed on a national securities exchange, the Nasdaq National Market, the Nasdaq Capital Market (formerly, the Nasdaq SmallCap Market) or another nationally recognized trading system as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the average of the high and low reported sale prices per share of Common Stock thereon on the trading day immediately preceding the Exercise Date (provided that if no such price is reported on such day, the Fair Market Value per share of Common Stock shall be determined pursuant to clause (2) below).

(2) If the Common Stock is not listed on a national securities exchange, the Nasdaq National Market, the Nasdaq Capital Market (formerly, the Nasdaq SmallCap Market) or another nationally recognized trading system as of the Exercise Date, the Fair Market Value per share of Common Stock shall be deemed to be the amount most recently determined by the Board of Directors of the Company (the "Board") to represent the fair market value per share of the Common Stock (including without limitation a determination for purposes of granting Common Stock options or issuing Common Stock under any plan, agreement or arrangement with employees of the Company); and, upon request of the Registered Holder, the Board (or a representative thereof) shall, as promptly as reasonably practicable but in any event not later than 10 days after such request, notify the Registered Holder of the Fair Market Value per share of Common Stock and furnish the Registered Holder with reasonable documentation of the Board's determination of such Fair Market Value. Notwithstanding the foregoing, if the Board has not made such a determination within the three-month period prior to the Exercise Date, then (A) the Board shall make, and shall provide or cause to be provided to the Registered Holder notice of, a determination of the Fair Market Value per share of the Common Stock within 15 days of a request by the Registered Holder that it do so, and (B) the exercise of this Warrant pursuant to this clause (2) shall be delayed until such determination is made and notice thereof is provided to the Registered Holder.

(e) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Purchase Price pursuant to this Section 2, the Company at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to the Registered Holder a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property for which this Warrant shall be exercisable and the Purchase Price) and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, as promptly as reasonably practicable after the written request at any time of the Registered Holder (but in any event not later than 10 days thereafter), furnish or cause to be furnished to the Registered Holder a certificate setting forth (i) the Purchase Price then in effect and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the exercise of this Warrant.

3. Fractional Shares. The Company shall not be required upon the exercise of this Warrant to issue any fractional shares, but shall pay the value thereof to the Registered Holder in cash on the basis of the Fair Market Value per share of Common Stock, as determined pursuant to subsection 2(d) above.

4. Investment Representations. The initial Registered Holder represents and warrants to the Company as follows:

(a) Investment. It is acquiring the Warrant, and (if and when it exercises this Warrant) it will acquire the Warrant Shares, for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof, nor with any present intention of distributing or selling the same; and the Registered Holder has no present or contemplated agreement, undertaking, arrangement, obligation, indebtedness or commitment providing for the disposition thereof.

(b) Accredited Investor. The Registered Holder is an "accredited investor" as defined in Rule 501(a) under the Securities Act of 1933, as amended (the "Act").

(c) Experience. The Registered Holder has made such inquiry concerning the Company and its business and personnel as it has deemed appropriate; and the Registered Holder has sufficient knowledge and experience in finance and business that it is capable of evaluating the risks and merits of its investment in the Company.

5. Transfers, etc.

(a) Notwithstanding anything to the contrary contained herein, this Warrant and the Warrant Shares shall not be sold or transferred unless either (i) they first shall have been registered under the Act, or (ii) such sale or transfer shall be exempt from the registration requirements of the Act and the Company shall have been furnished with an opinion of legal counsel, reasonably satisfactory to the Company, to the effect that such sale or transfer is exempt from the registration requirements of the Act. Notwithstanding the foregoing, no registration or opinion of counsel shall be required for (i) a transfer by a Registered Holder which is an entity to a wholly owned subsidiary of such entity, a transfer by a Registered Holder which is a partnership to a partner of such partnership or a retired partner of such partnership or to the estate of any such partner or retired partner, or a transfer by a Registered Holder which is a limited liability company to a member of such limited liability company or a retired member or to the estate of any such member or retired member, provided that the transferee in each case agrees in writing to be subject to the terms of this Section 5, or (ii) a transfer made in accordance with Rule 144 under the Act.

(b) Each certificate representing Warrant Shares shall bear a legend substantially in the following form:

"The securities represented hereby have not been registered under the Securities Act of 1933, as amended, or any state securities laws and neither the securities nor any interest therein may not be offered, sold, transferred, pledged or otherwise disposed of except pursuant to an effective registration under such act or an exemption from registration, which, in the opinion of counsel reasonably satisfactory to counsel for this corporation, is available."

(c) The Company will maintain a register containing the name and address of the Registered Holder of this Warrant. The Registered Holder may change its address as shown on the warrant register by written notice to the Company requesting such change.

(d) Subject to the provisions of this Section 5 hereof, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant with a properly executed assignment (in the form of Exhibit II hereto) at the principal office of the Company (or, if another office or agency has been designated by the Company for such purpose, then at such other office or agency).

6. No Impairment. The Company will not, by amendment of its charter or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Registered Holder against impairment.

7. Notices of Record Date, etc. In the event:

(a) the Company shall take a record of the holders of its Common Stock (or other stock or securities at the time deliverable upon the exercise of this Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(b) of any capital reorganization of the Company, any reclassification of the Common Stock of the Company, any consolidation or merger of the Company with or into another corporation (other than a merger in which the outstanding capital stock of the Company is not exchanged for securities or property of another company), or any transfer of all or substantially all of the assets of the Company; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company,

then, and in each such case, the Company will send or cause to be sent to the Registered Holder a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time deliverable upon the exercise of this Warrant) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

8. Reservation of Stock. The Company will at all times reserve and keep available, solely for issuance and delivery upon the exercise of this Warrant, such number of Warrant Shares and other securities, cash and/or property, as from time to time shall be issuable upon the exercise of this Warrant.

9. Agreement in Connection with Public Offering. The Registered Holder agrees, in connection with the initial underwritten public offering of the Company's securities pursuant to a registration statement under the Act, (i) not to sell, make short sale of, loan, grant any options for the purchase of, or otherwise dispose of any shares of Common Stock or any other securities of the Company held by the Registered Holder (other than any shares included in the offering) without the prior written consent of the Company or the underwriters managing such initial underwritten public offering of the Company's securities for a period of 180 days from the effective date of such registration statement, and (ii) to execute any agreement reflecting clause (i) above as may be requested by the Company or the managing underwriters at the time of such offering.

10. Exchange or Replacement of Warrants.

(a) Upon the surrender by the Registered Holder, properly endorsed, to the Company at the principal office of the Company, the Company will, subject to the provisions of Section 5 hereof, issue and deliver to or upon the order of the Registered Holder, at the Company's expense, a new Warrant or Warrants of like tenor, in the name of the Registered Holder or as the Registered Holder (upon payment by the Registered Holder of any applicable transfer taxes) may direct, calling in the aggregate on the face or faces thereof for the number of shares of Common Stock (or other securities, cash and/or property) then issuable upon exercise of this Warrant.

(b) Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor.

11. Notices. All notices and other communications from the Company to the Registered Holder in connection herewith shall be mailed by certified or registered mail, postage prepaid, or sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, to the address last furnished to the Company in writing by the Registered Holder. All notices and other communications from the Registered Holder to the Company in connection herewith shall be mailed by certified or registered mail, postage prepaid, or sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, to the Company at its principal office set forth below. If the Company should at any time change the location of its principal office to a place other than as set forth below, it shall give prompt written notice to the Registered Holder and thereafter all references in this Warrant to the location of its principal office at the particular time shall be as so specified in such notice. All such notices and communications shall be deemed delivered (i) two business days after being sent by certified or registered mail, return receipt requested, postage prepaid, or (ii) one business day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery.

12. No Rights as Stockholder. Until the exercise of this Warrant, the Registered Holder shall not have or exercise any rights by virtue hereof as a stockholder of the Company. Notwithstanding the foregoing, in the event (i) the Company effects a split of the Common Stock by means of a stock dividend and the Purchase Price of and the number of Warrant Shares are adjusted as of the date of the distribution of the dividend (rather than as of the record date for such dividend), and (ii) the Registered Holder exercises this Warrant between the record date and the distribution date for such stock dividend, the Registered Holder shall be entitled to receive, on the distribution date, the stock dividend with respect to the shares of Common Stock acquired upon such exercise, notwithstanding the fact that such shares were not outstanding as of the close of business on the record date for such stock dividend.

13. Amendment or Waiver. Any term of this Warrant may be amended or waived (either generally or in a particular instance and either retroactively or prospectively) with the written consent of the Company and the holders of Company Warrants representing at least two-thirds (2/3) of the number of shares of Common Stock then subject to outstanding Company Warrants. Notwithstanding the foregoing, (a) this Warrant may be amended and the observance of any term hereunder may be waived without the written consent of the Registered Holder only in a manner which applies to all Company Warrants in the same fashion and (b) the number of Warrant Shares subject to this Warrant and the Purchase Price of this Warrant, as well as the provisions of this Section 13, may not be amended, and the right to exercise this Warrant may not be waived, without the written consent of the Registered Holder. The Company shall give prompt written notice to the Registered Holder of any amendment hereof or waiver hereunder that was effected without the Registered Holder's written consent. No waivers of any term, condition or provision of this Warrant, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

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

15. Governing Law. This Warrant will be governed by and construed in accordance with the internal laws of the State of Delaware (without reference to the conflicts of law provisions thereof).

16. Facsimile Signatures. This Warrant may be executed by facsimile signature.

* * * * * * *

EXECUTED as of the Date of Issuance indicated above.

NILE THERAPEUTICS, INC.

By: /s/ Peter M. Strumph

Name: Peter M. Strumph
Title: Chief Executive Officer

Exhibit 10.1

EXHIBIT I

FORM OF SUBSCRIPTION

(To be signed only upon exercise of Warrant)

To: Nile Therapeutics, Inc.

The undersigned, the holder of the attached Common Stock Warrant, hereby elects to exercise the purchase right represented by such Warrant for, and to purchase thereunder, _____[1] shares of Common Stock of Nile Therapeutics, Inc. and such holder herewith makes payment of $_____ therefor.

The undersigned requests that certificates for such shares be issued in the name of, and delivered to: _____ whose address is: _____.

DATED: _____

_____
(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

Name:

Title:

[1] Insert here the number of shares called for on the face of the Warrant (or, in the case of a partial exercise, the portion thereof as to which the Warrant is being exercised), in either case without making any adjustment for any stock or other securities or property or cash which, pursuant to the adjustment provisions of the Warrant, may be deliverable upon exercise.

ASSIGNMENT FORM

(To assign the foregoing warrant, execute
this form and supply required information.
Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

_____ whose address is _____.

_____

Dated: _____, 20___

Holder's Signature: _____

Holder's Address: _____

_____

Signature Guaranteed: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever, and must be guaranteed by a bank or trust company. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

Exhibit 10.2
Execution Copy

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "**Agreement**") is made this 11th day of May 2007, by and between **NILE THERAPEUTICS, INC**., a Delaware corporation with principal executive offices at 2850 Telegraph Avenue, Suite 310, Berkeley, CA 94705, (the "**Company**"), and **PETER M. STRUMPH**, residing at 585 Eureka Street, San Francisco, CA 94114 (the "**Executive**").

W I T N E S S E T H:

WHEREAS, the Company desires to employ the Executive as Chief Executive Officer of the Company; and

WEHERAS, the Executive desires to serve the Company in such capacity, upon the terms and subject to the conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

1. Employment.

The Company agrees to employ the Executive, and the Executive agrees to be employed by the Company, upon the terms and subject to the conditions of this Agreement.

2. Term.

The employment of the Executive by the Company as provided in Section 1 shall commence on June 4, 2007 (the "**Effective Date**") and continue for a period of three (3) years from the Effective Date unless terminated earlier as set forth in Sections 9 and 10 below or by mutual written agreement of the parties hereto (the "**Term**"). In the event that the Company does not intend to renew this Agreement, the Company shall provide the Executive with a minimum of 120 days written notice prior to the expiration of the Term.

3. Duties; Best Efforts; Place of Performance.

(a) The Executive shall serve as Chief Executive Officer of the Company and shall, subject to the direction of the Board of Directors of the Company, have such powers and perform such duties as are customarily performed by the Chief Executive Officer including, but not limited to developing Company strategy and managing its implementation, overseeing Company hiring, supervising the performance of the Company's management, and interfacing with investors, customers, potential customers, media, analysts and the general public on behalf of Company. The Executive shall also have such other powers and duties as may be from time to time directed by the Board of Directors of the Company, provided that the nature of the Executive's powers and duties so prescribed shall not be inconsistent with the Executive's position and duties herein.

(b) The Executive shall devote substantially all of his business time, attention and energies to the business and affairs of the Company and shall use his best efforts to advance the interests of the Company and shall not during the Term be actively engaged in any other business activity, whether or not such business activity is pursued for gain, profit or other pecuniary advantage, that will interfere with the performance by the Executive of his duties hereunder or the Executive's availability to perform such duties or that will adversely affect, or negatively reflect upon, the Company.

(c) The duties to be performed by the Executive hereunder shall be performed primarily at the office of the Company, which shall be located in or within close proximity to Berkeley, California, or such other location as the Company and Executive may mutually agree; provided, however, that the Executive understands that his duties will require periodic travel, which may be substantial at times.

4. Directorship. The Company shall use its best efforts to cause the Executive to be elected as a member of its Board of Directors throughout the Term and shall include him in the management slate for election as a director at every stockholders meeting during the Term at which his term as a director would otherwise expire. The Executive agrees to accept election, and to serve during the Term, as director of the Company, without any compensation hereto other than as specified in this Agreement.

5. Compensation. As full compensation for the performance by the Executive of his duties under this Agreement, the Company shall pay the Executive as follows:

(a) Base Salary. The Company shall pay the Executive a base salary (the "**Base Salary**") equal to Three Hundred Ten Thousand Dollars ($310,000.00) per annum, payable during the Term in accordance with the Company's normal payroll practices; provided, however, that the Base Salary may be increased at the discretion of the Board of Directors upon each anniversary of this Agreement.

(b) Performance Bonus. The Company shall annually pay the Executive a proportionate share (based on the assigned weight of each of the Performance Milestones (as defined below) of One Hundred Twenty Five Thousand Dollars ($125,000.00) upon the successful completion of annual corporate or individual performance milestones (the "**Performance Milestones**") at the "Baseline" metric. If Performance Milestones are achieved at the "Exemplary" metric, the Company shall pay Executive a proportionate share of One Hundred Fifty Thousand Dollars ($150,000.00), and if achieved at the "Pessimistic" metric, the Company will pay you a proportionate share of One-Hundred Thousand Dollars ($100,000.00). The Performance Milestones and the metrics for the first year of the Term are as set forth on Schedule 5(b). The Performance Milestones shall be amended each subsequent year during the Term upon the mutual agreement of the Company and the Executive no later than 30 days following the beginning of such year.

(c) Change of Control Bonus. The Company shall pay the Executive the applicable amount set forth on Schedule 5(c) upon a Change of Control (as defined below) of the Company where the Company is ascribed a valuation equal to or above those amounts set forth on Schedule 5(c). In the event of a Change of Control, the applicable bonus shall be paid on the effective date of such Change of Control and all unvested Employment and Performance Options shall vest and become exercisable immediately and shall remain exercisable for a period of not less than five (5) years, regardless of whether the Executive's employment is terminated.

(i) For purposes of this Agreement, a "**Change of Control**" shall mean:

A. a private transaction (or series of related private transactions) leading to a merger, acquisition, consolidation, or sale of all or substantially all of the assets of the Company; or

B. any transaction a result of which a single party (or group of affiliated parties) acquires or holds capital stock of the Corporation representing a majority of the Corporation's outstanding voting power.

C. the disposition by the Company (whether direct or indirect, by sale of assets or stock, merger, consolidation or otherwise) of all or substantially all of its business and/or assets in one transaction or series of related transactions (other than a merger effected exclusively for the purpose of changing the domicile of the Company)

(ii) Notwithstanding Section 5(c)(i)A and 5(c)(i)B above, no transaction shall be considered a Change of Control under this Agreement, and no bonus shall be paid or options vest, pursuant to this Section 5(c):

A. if the stockholders existing prior to such transaction(s) hold in the aggregate more than fifty percent (50%) of the securities or assets of the surviving or resulting company;

B. in connection with a private placement of equity securities of the Company in connection with a financing of the Company's on-going operations; or

C. for any transaction ascribing a valuation to the Company of less than Seventy Five Million Dollars ($75,000,000); provided, however, that such a transaction may be considered as part of a series of transactions that gives rise to a Change of Control pursuant to Section 5(c)(i).

(d) Withholding. The Company shall withhold all applicable federal, state and local taxes and social security and such other amounts as may be required by law from all amounts payable to the Executive under this Section 5.

(e) Equity.

(i) Employment Options. The Company shall grant to the Executive stock options (the "**Employment Options**"), pursuant to the Company's 2005 Stock Option Plan, to purchase that number of shares of common stock of the Company, par value $0.001 per share (the "**Common Stock**") representing four percent (4%) of the outstanding shares of Common Stock of the Company on a Fully Diluted Basis (as defined below in Section 5(e)(iii)C) immediately following the closing of the first Company financing subsequent to the Effective Date (the "**Financing**"). The Employment Options shall vest and become exercisable in three (3) equal installments on the day before each anniversary of this Agreement at an exercise price equal to the Fair Market Value (as determined under the Company's 2005 Stock Plan) (the "**Exercise Price**") of a share of Common Stock following the Financing.

(ii) Performance Options. The Company shall grant to the Executive stock options (the "**Performance Options**"), pursuant to the Company's 2005 Stock Option Plan, to purchase that number of shares of Common Stock representing three and six tenths percent (3.6%) of the outstanding Common Stock on a Fully Diluted Basis immediately following the Financing. On the last day of each year during the Term, a proportionate share (based on the assigned weights of each of the Performance Milestones) of that portion of the Performance Options representing 1.2% of the outstanding Common Stock on the date of grant shall become vested and immediately exercisable for Performance Milestones that are achieved during that year at the "Exemplary" metric. Performance Options to purchase a proportionate share of 1% of the outstanding shares of Common Stock on the grant date shall become vested and immediately exercisable for Performance Milestones that are achieved during the year at the "Baseline" metric. Performance Options to purchase a proportionate share of 0.8% of the outstanding shares of Common Stock on the grant date for Performance Milestones shall become vested and immediately exercisable for Performance Milestones that are achieved at the "Pessimistic" metric.

(iii) Technology Options. In the event that the Company acquires by license, acquisition or otherwise, an additional biotechnology product or series of biotechnology products (a "**Technology**") for development that is first identified by the Executive, then the Company shall grant to the Executive options (the "**Technology Options**") to purchase a number of shares of Common Stock, as follows:

A. One percent (1%) of the then outstanding shares of Common Stock of the Company on a Fully Diluted Basis for a Technology that is in pre-clinical development; and

B. Two Percent (2%) of the shares of Common Stock of the Company on a Fully Diluted Basis for a Technology that is in human clinical trials.

C. For purposes of this Agreement, "**Fully Diluted Basis**" shall mean the number of shares of Common Stock that would be outstanding upon the conversion of all outstanding shares of Preferred Stock outstanding from time to time, plus the shares of Common Stock issuable upon conversion or exercise, as the case may be, of all issued and outstanding securities of the Company convertible into, exercisable for, or exchangeable for, directly or indirectly, shares of Common Stock of the Company, including but not limited to, options and warrants to purchase Common Stock that are currently exercisable by the holder thereof or which will become exercisable within 90 days of determining event

D. Any such Technology Options issued to the Executive shall vest immediately upon the date of grant and shall be exercisable for a period of five (5) years at an exercise price equal to the Fair Market Value (as determined under the Company's 2005 Stock Plan) of the Common Stock on the date of the grant of such Technology Options.

(f) Expenses. The Company shall reimburse the Executive for all normal, usual and necessary expenses incurred by the Executive in furtherance of the business and affairs of the Company, including reasonable travel and entertainment, upon timely receipt by the Company of appropriate vouchers or other proof of the Executive's expenditures and otherwise in accordance with any expense reimbursement policy as may from time to time be adopted by the Company.

(g) Insurance. The Company shall pay the premiums relating to personal life insurance coverage for Executive in an amount equal to One Million Dollars ($1,000,000.00), naming Executive's heirs as beneficiaries. In the event that the Company does not have appropriate medical, dental and vision plans in place on the Effective Date, the Company shall reimburse the Executive for the cost of COBRA premiums associated with his continued coverage under the plans of his prior employer.

(h) Other Benefits. The Executive shall be entitled to all rights and benefits for which he shall be eligible under any benefit or other plans (including, without limitation, dental, medical, vision, medical reimbursement and hospital plans, pension plans, employee stock purchase plans, profit sharing plans, bonus plans and other so-called "fringe benefits") as the Company shall make available to its senior executives from time to time.

(i) Vacation. The Executive shall, during the Term, be entitled to four (4) weeks of vacation per annum, in addition to holidays observed by the Company. The parties agree that Executive shall not take a vacation in excess of two consecutive weeks without the express consent of the Board. Executive shall not be entitled to accrue more than eight (8) weeks of vacation at any time during his employment with the Company.

6. Confidential Information and Inventions.

(a) The Executive recognizes and acknowledges that in the course of his duties he is likely to receive confidential or proprietary information owned by the Company, its affiliates or third parties with whom the Company or any such affiliates has an obligation of confidentiality. Accordingly, during and after the Term, the Executive agrees to keep confidential and not disclose or make accessible to any other person or use for any other purpose other than in connection with the fulfillment of his duties under this Agreement, any Confidential and Proprietary Information (as defined below) owned by, or received by or on behalf of, the Company or any of its affiliates. "**Confidential and Proprietary Information**" shall include, but shall not be limited to, confidential or proprietary scientific or technical information, data, formulas and related concepts, business plans (both current and under development), client lists, promotion and marketing programs, trade secrets, or any other confidential or proprietary business information relating to development programs, costs, revenues, marketing, investments, sales activities, promotions, credit and financial data, manufacturing processes, financing methods, plans or the business and affairs of the Company or of any affiliate or client of the Company. The Executive expressly acknowledges the trade secret status of the Confidential and Proprietary Information and that the Confidential and Proprietary Information constitutes a protectable business interest of the Company. The Executive agrees not to:

(i) use any such Confidential and Proprietary Information for strictly personal use or for others; and

(ii) permanently remove any Company material or reproductions (including but not limited to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof from the Company's offices at any time during his employment by the Company, except as required in the execution of the Executive's duties to the Company, provided; however, that the Executive shall not be prevented from using or disclosing any Confidential and Proprietary Information:

A. that Executive can demonstrate was known to him prior to the effective date of that certain Confidential Disclosure Agreement entered into between the Parties dated December 12, 2006;

B. that is now, or becomes in the future, available to persons who are not legally required to treat such information as confidential unless such persons acquired the Confidential and Proprietary Information through acts or omissions of Executive; or

C. that he is compelled to disclose pursuant to the order of a court or other governmental or legal body having jurisdiction over such matter.

(b) The Executive agrees to return immediately all Company material and reproductions (including but not limited, to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof in his possession to the Company upon request and in any event immediately upon termination of employment.

(c) Except with prior written authorization by the Company, the Executive agrees not to disclose or publish any of the Confidential and Proprietary Information, or any confidential, scientific, technical or business information of any other party to whom the Company or any of its affiliates owes a legal duty of confidence, at any time during or after his employment with the Company.

(d) The Executive agrees that all inventions, discoveries, improvements and patentable or copyrightable works, relating to the Company's Business (as defined below). ("**Inventions**") initiated, conceived or made by him, either alone or in conjunction with others, during the Term shall be the sole property of the Company to the maximum extent permitted by applicable law and, to the extent permitted by law, shall be "works made for hire" as that term is defined in the United States Copyright Act (17 U.S.C.A., Section 101). For purposes of this Agreement, "**Company's Business**" shall be the development of novel therapeutics for the treatment of human disease, and which are listed on the attached Schedule 6(d) (which Schedule 6(d) may be amended from time to time to include additional therapeutics), and in the future, any other business in which it actually devotes substantive resources to study, develop or pursue. The Company shall be the sole owner of all patents, copyrights, trade secret rights, and other intellectual property or other rights in connection therewith. The Executive hereby assigns to the Company all right, title and interest he may have or acquire in all such Inventions; provided; however, that the Board of Directors of the Company may in its sole discretion agree to waive the Company's rights pursuant to this Section 6(d) with respect to any Invention that is not directly or indirectly related to the Company's business. The Executive further agrees to assist the Company in every proper way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights or other rights on such Inventions in any and all countries, and to that end the Executive will execute all documents necessary:

(i) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and

(ii) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

(e) The Executive acknowledges that while performing the services under this Agreement the Executive may locate, identify and/or evaluate patented or patentable inventions having commercial potential in the fields of pharmacy, pharmaceutical, biotechnology, healthcare, technology and other fields which may be of potential interest to the Company or one of its affiliates (the "**Third Party Inventions**"). The Executive understands, acknowledges and agrees that all rights to, interests in or opportunities regarding, all Third-Party Inventions identified by the Company, any of its affiliates or either of the foregoing persons' officers, directors, employees (including the Executive), agents or consultants during the Term shall be and remain the sole and exclusive property of the Company or such affiliate and the Executive shall have no rights whatsoever to such Third-Party Inventions and will not pursue for himself or for others any transaction relating to the Third-Party Inventions which is not on behalf of the Company.

(f) The provisions of this Section 6 shall survive any termination of this Agreement.

7. Non-Competition and Non-Solicitation.

(a) The Executive understands and recognizes that his services to the Company are special and unique and that in the course of performing such services the Executive will have access to and knowledge of Confidential and Proprietary Information (as defined in Section 6) and the Executive agrees that, during the Term he shall not in any manner, directly or indirectly, on behalf of himself or any person, firm, partnership, joint venture, corporation or other business entity ("**Person**"), enter into or engage in any business which is directly or indirectly competitive with the Company Business, either as an individual for his own account, or as a partner, joint venturer, owner, executive, employee, independent contractor, principal, agent, consultant, salesperson, officer, director or shareholder of a Person in a business competitive with the Company within the geographic area of the Company's Business, which is deemed by the parties hereto to be worldwide; provided; however, if a Person's business has multiple lines or segments, some of which are not competitive with the Company's Business, nothing herein shall prevent the Executive from being employed by, working for or assisting that line or segment of a Person's business that is not competitive with the Company's Business. The Executive acknowledges that, due to the unique nature of the Company's Business, the loss of any of its clients or business flow or the improper use of its Confidential and Proprietary Information could create significant instability and cause substantial damage to the Company and its affiliates and therefore the Company has a strong legitimate business interest in protecting the continuity of its business interests and the restriction herein agreed to by the Executive narrowly and fairly serves such an important and critical business interest of the Company. Notwithstanding the foregoing, nothing contained in this Section 7(a) shall be deemed to prohibit the Executive from acquiring or holding, solely for investment purposes, the securities of any corporation or other entity, some or all of the activities of which are competitive with the business of the Company so long as such securities do not, in the aggregate, constitute more than five percent (5%) of any class or series of outstanding securities of such corporation or other entity.

(b) During the Term and for a period of twelve (12) months thereafter (or six (6) months in the case of clause (b)(ii) below), the Executive shall not, directly or indirectly, without the prior written consent of the Company:

(i) solicit or induce any employee of the Company or any of its subsidiaries or Two River Group Holdings, LLC ("**Two River**") to leave the employ of the Company or such subsidiaries or Two River; or

(ii) solicit the business of any agent, client or customer of the Company or any of its subsidiaries with respect to products or services similar to and competitive with those provided or supplied by the Company or any of its subsidiaries.

(c) The Executive and Company mutually agree that both during the Term and at all times thereafter, neither party shall directly or indirectly disparage, whether or not true, the name or reputation of the other party, and in the case of the Company including any officer, director or material shareholder of the Company. Notwithstanding the foregoing, nothing in this Agreement shall preclude the parties hereto or their successors from making truthful statements in the proper performance of their jobs or that are required by applicable law, regulation or legal process, and the parties shall not violate this provision in making truthful statements in response to disparaging statements made by the other party.

(d) In the event that the Executive materially breaches any provisions of Section 6 or this Section 7, then, in addition to any other rights which the Company may have, the Company shall be entitled to seek injunctive relief to enforce the restrictions contained in such Sections which injunctive relief shall be in addition to any other rights or remedies available to the Company under the law or in equity.

(e) The right and remedy enumerated in Section 7(d) shall be independent of and shall be in addition to and not in lieu of any other rights and remedies available to the Company at law or in equity. If any of the covenants contained in this Section 7, or any part of any of them, is hereafter construed or adjudicated to be invalid or unenforceable, the same shall not affect the remainder of the covenant or covenants or rights or remedies which shall be given full effect without regard to the invalid portions. If any of the covenants contained in this Section 7 is held to be invalid or unenforceable because of the duration of such provision or the area covered thereby, the parties agree that the court making such determination shall have the power to reduce the duration and/or area of such provision and in its reduced form such provision shall then be enforceable. No such holding of invalidity or unenforceability in one jurisdiction shall bar or in any way affect the Company's right to the relief provided in this Section 7 or otherwise in the courts of any other state or jurisdiction within the geographical scope of such covenants as to breaches of such covenants in such other respective states or jurisdictions, such covenants being, for this purpose, severable into diverse and independent covenants.

(f) In the event that an actual proceeding is brought in equity to enforce the provisions of Section 6 or this Section 7, the Executive shall not urge as a defense that there is an adequate remedy at law nor shall the Company be prevented from seeking any other remedies which may be available. The Executive agrees that he shall not raise in any proceeding brought to enforce the provisions of Section 6 or this Section 7 that the covenants contained in such Sections limit his ability to earn a living.

(g) The provisions of this Section 7 shall survive any termination of this Agreement, provided that the Company has not breached its obligations under this Agreement.

8. Representations and Warranties by the Executive. The Executive hereby represents and warrants to the Company as follows:

(a) Neither the execution or delivery of this Agreement nor the performance by the Executive of his duties and other obligations hereunder violate or will violate statute or law or conflict with or constitute a default or breach of any covenant or obligation, including without limitation any non-competition restrictions, under (whether immediately, upon the giving of notice or lapse of time or both) any prior employment agreement, contract, or other instrument to which the Executive is a party or by which he is bound. Notwithstanding the foregoing, the Executive makes no representation as to the enforceability of the provision in Section 7.

(b) The Executive has the full right, power and legal capacity to enter and deliver this Agreement and to perform his duties and other obligations hereunder. This Agreement constitutes the legal, valid and binding obligation of the Executive enforceable against him in accordance with its terms. No approvals or consents of any persons or entities are required for the Executive to execute and deliver this Agreement or perform his duties and other obligations hereunder. Notwithstanding the foregoing, the Executive makes no representation as to the enforceability of the provision in Section 7.

9. Termination by the Company. The Executive's employment hereunder shall be terminated as follows:

(a) Automatically upon the Executive's death.

(b) By the Company due to the Executive's Disability. For purposes of this Agreement, a termination for "Disability" shall occur:

(i) when the Board of Directors of the Company has provided a written termination notice to the Executive supported by a written statement from a reputable independent physician to the effect that the Executive shall have become so physically or mentally incapacitated as to be unable to resume, even with any reasonable accommodations, within the ensuing twelve (12) months, his employment hereunder by reason of physical or mental illness or injury; or

(ii) upon rendering of a written termination notice by the Board of Directors of the Company after the Executive has been unable, even with any reasonable accommodations, to substantially perform his duties hereunder for one hundred twenty (120) or more consecutive days, or more than one hundred eighty (180) days in any consecutive twelve month period, by reason of any physical or mental illness or injury.

(iii) For purposes of this Section 9(b), the Executive agrees to make himself available and to cooperate in any reasonable examination by a reputable independent physician designated by the Company and reasonably acceptable to the Executive.

(c) By the Company for Cause; provided, however, that any case where the Executive's action or inaction that may constitute Cause is capable of being cured, such action or inaction shall not constitute Cause if such action or inaction is cured by the Executive within 30 days receipt of written notice from the Company of the action or inaction. For purposes of this Agreement, "**Cause**" shall include any of the following:

(i) Willful failure to perform the duties or obligations hereunder or willful misconduct by the Executive in respect of such duties or obligations, including, without limitation, willful failure, disregard or refusal by the Executive to abide by specific objective and lawful directions received by the Executive in writing from the Board of Directors;

(ii) Any willful, intentional or grossly negligent act by the Executive having the effect of injuring, in a material way, whether financial or otherwise, the business or reputation of the Company or any of its subsidiaries or affiliates;

(iii) The Executive's indictment of any felony or a misdemeanor involving moral turpitude that causes material harm to the Company or its reputation;

(iv) The determination by the Company, after a reasonable and good-faith investigation by the Company following a written allegation by another employee of the Company, that the Executive engaged in some form of harassment prohibited by law (including, without limitation, age, sex or race discrimination), unless the Executive's actions were specifically directed by the Company; provided, however, that Cause shall not exist under this clause (iii) unless the Company gives written notice to Executive where such notice describes with particularity the alleged act(s) at issue and has given the Executive an opportunity to be heard at a meeting of the Board, and that the Board provide the Executive with a summary of its findings;

(v) Any misappropriation or embezzlement of the property of the Company or its affiliates (whether or not a misdemeanor or felony); and

(vi) Material breach by the Executive of any of the provisions of Sections 6, 7 or 8 of this Agreement.

Notwithstanding the foregoing, no act or omission by the Executive shall be deemed to be "willful" if the Executive reasonably believed in good faith that such acts or omissions were in the best interests of the Company.

(d) The Executive's employment hereunder may be terminated by the Board of Directors of the Company (or its successor) upon the occurrence of a Change of Control (as defined in Section 5(c)(i) above).

10. Termination by Executive. Executive may terminate his employment as follows:

(a) at any time, for any reason or no reason at all, upon not less than sixty (60) days prior written notice to the Company, which may be waived by the Company;

(b) at any time for "**Good Reason**" which shall constitute:

(i) an actual diminution by the Company of the Executive's title, duties, Base Salary, Performance Bonus or benefits;

(ii) a material breach by the Company of any of the provisions contained herein, which, if capable of being cured, is not cured by the Company within 30 days of written notice by the Executive to the Company; and

(iii) relocating the Company's principal place of business more than fifty (50) miles away from Berkeley, California.

11. Compensation upon Termination.

(a) If the Executive's employment is terminated pursuant to Section 9(a), or 9(b), the Company shall pay to the Executive or to the Executive's estate, as applicable:

(i) any Base Salary, Performance Bonus, vacation and expense reimbursement accrued through the date of termination (the "**Accrued Obligations**")

(ii) his Base Salary for a period of six (6) months following termination;

(iii) a pro rata portion of the Performance Bonus for the year in which the Executive's employment is terminated; and

(iv) all Employment Options shall vest immediately and become exercisable.

(b) If the Executive's employment is terminated pursuant to Section 9(c) or 10(a), then:

(i) the Company shall pay to the Executive the Accrued Obligations;

(ii) the Executive shall have no further entitlement to any other compensation or benefits from the Company except as provided in the Company's compensation and benefit plans; and

(iii) all Employment Options and Performance Options that have not previously vested shall expire immediately.

(c) If the Executive's employment is terminated pursuant to Section 9(d) or Section 10(b), or by the Company other than pursuant to Section 9(a), 9(b) or 9(c), then:

(i) the Company shall:

A. pay the Executive the Accrued Obligations;

B. pay to the Executive his Base Salary and benefits for a period of one (1) year following such termination; and

C. pay the Executive a pro rata Performance Bonus for the year in which the Executive's employment is terminated (based on the assumption that the Baseline metric is met).

(ii) all unvested Employment Options shall vest and become exercisable immediately and shall remain exercisable for a period of not less than five (5) years.

(d) In the event of non-renewal of this Agreement, the Company will pay the Executive all Accrued Obligations on the expiration date of this Agreement.

(e) Notwithstanding anything to the contrary herein or in this Section 11 or otherwise in the Company's 2005 Stock Option Plan, following termination of the Executive's employment other than pursuant to Section 9(c) or 10(a), the Executive shall have a period of no less than six (6) months to exercise any and all vested Employment Options and Performance Options; provided, however, if the Company sends to the Executive a non-renewal notice provided for under Section 2 hereof, the Executive shall have a period of no less than twelve (12) months after the termination of his employment to exercise any and all vested Employment Options and Performance Options.

(f) This Section 11 sets forth the only obligations of the Company with respect to the termination of the Executive's employment with the Company, and the Executive acknowledges that, upon the termination of his employment, he shall not be entitled to any payments or benefits which are not explicitly provided in Section 11.

(g) Upon termination of the Executive's employment hereunder for any reason, the Executive shall be deemed to have resigned as director of the Company, effective as of the date of such termination.

(h) The provisions of this Section 11 shall survive any termination of this Agreement.

(i) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California, without giving effect to its principles of conflicts of laws.

12. Miscellaneous.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California, without giving effect to its principles of conflicts of laws.

(b) Any dispute arising out of, or relating to, this Agreement or the breach thereof (other than Sections 6 or 7 hereof), or regarding the interpretation thereof, shall be exclusively decided by binding arbitration conducted in California in accordance with the rules of the American Arbitration Association (the " **AAA**") then in effect before a single arbitrator appointed in accordance with such rules. Judgment upon any award rendered therein may be entered and enforcement obtained thereon in any court having jurisdiction. The arbitrator shall have authority to grant any form of appropriate relief, whether legal or equitable in nature, including specific performance. Each of the parties agrees that service of process in such arbitration proceedings shall be satisfactorily made upon it if sent by registered mail addressed to it at the address referred to in clause (g) below. The costs of such arbitration shall be borne proportionate to the finding of fault as determined by the arbitrator. Judgment on the arbitration award may be entered by any court of competent jurisdiction.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

(d) This Agreement, and the Executive's rights and obligations hereunder, may not be assigned by the Executive. The Company may assign its rights, together with its obligations, hereunder in connection with any sale, transfer or other disposition of all or substantially all of its business or assets provided the assignee entity which succeeds to the Company expressly assumes the Company's obligations hereunder and complies with the terms of this Agreement.

(e) This Agreement cannot be amended orally, or by any course of conduct or dealing, but only by a written agreement signed by the parties hereto.

(f) The failure of either party to insist upon the strict performance of any of the terms, conditions and provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance therewith, and such terms, conditions and provisions shall remain in full force and effect. No waiver of any term or condition of this Agreement on the part of either party shall be effective for any purpose whatsoever unless such waiver is in writing and signed by such party.

(g) All notices, requests, consents and other communications, required or permitted to be given hereunder, shall be in writing and shall be delivered personally or by an overnight courier service or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at the addresses set forth on the first page of this Agreement, and shall be deemed given when so delivered personally or by overnight courier, or, if mailed, five (5) days after the date of deposit in the United States mails. Either party may designate another address, for receipt of notices hereunder by giving notice to the other party in accordance with this clause (g).

(h) This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof. No representation, promise or inducement has been made by either party that is not embodied in this Agreement, and neither party shall be bound by or liable for any alleged representation, promise or inducement not so set forth.

(i) As used in this Agreement, "affiliate" of a specified Person shall mean and include any Person controlling, controlled by or under common control with the specified Person.

(j) The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(k) This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

13. Certain Tax Provisions.

(a) Section 409A. Any payment otherwise required under this Agreement or any other plan or arrangement of the Company to be made to the Executive after a termination of Executive's employment that the Company reasonably determines is subject to Section 409A(a)(2)(B)(i) of the Internal Revenue Code of 1986, as amended (the "Code") shall not be paid or payment commenced until the later of (a) six months after the date of the Executive's "separation from service" (within the meaning of Section 409A of the Code) and (b) the payment date or commencement date specified in this Agreement for such payment(s). On the earliest date on which such payment(s) can be made or commenced without violating the requirements of Section 409A(a)(2)(B)(i) of the Code, the Company shall pay the Executive, in a single lump sum, an amount equal to the aggregate amount of all payments delayed pursuant to the preceding sentence. Such delay will not affect the timing of any installments or other payments otherwise payable after the delay period imposed under Section 409. In addition, other provisions of this Agreement or any other such plan or arrangement notwithstanding, the Company shall have no right to accelerate or delay any such payment or to make any such payment as the result of any specific event except to the extent permitted under Section 409A.

(b) Section 280G. Notwithstanding anything to the contrary contained in this Agreement, to the extent that any of the payments and benefits provided for under this Agreement or any other agreement or arrangement between the Executive and the Company (collectively, the "Payments") constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this Section 13(b), would be subject to the excise tax imposed by Section 4999 of the Code, then the Payments shall be payable either (i) in full or (ii) as to such lesser amount which would result in no portion of such Payments being subject to excise tax under Section 4999 of the Code; whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the Executive's receipt on an after-tax basis, of the greatest amount of economic benefits under this Agreement, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. Unless the Executive and the Company otherwise agree in writing, any determination required under this Section 13(b) shall be made in writing by the Company's independent public accountants (the "Accountants"), whose reasonable determination shall be conclusive and binding upon the Executive and the Company for all purposes. For purposes of making the calculations required by this Section 13(b), the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of the Sections 280G and 4999 of the Code. The Executive and the Company shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 13(b). If this Section 13(b) is applied to reduce an amount payable to the Executive, and the Internal Revenue Service successfully asserts that, despite the reduction, the Executive has nonetheless received payments which are in excess of the maximum amount that could have been paid to him without being subjected to any excise tax, then, unless it would be unlawful for the Company make such a loan or similar extension of credit to the Executive, the Executive may repay such excess amount to the Company though such amount constitutes a loan to you made at the date of payment of such excess amount, bearing interest at 120% of the applicable federal rate (as determined under section 1274(d) of the Code in respect of such loan).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

NILE THERAPEUTICS, INC.

By: /s/ David M. Tanen

Name: Mr. David M. Tanen
Title: Secretary
Date: March 16, 2007

EXECUTIVE

By: /s/ Peter M. Strumph

Name: Mr. Peter M. Strumph
Date: March 11, 2007

SCHEDULE 5(b)

Nile Therapeutics, Inc.
Goals Worksheet

Executive: Peter M. Strumph
Period: June 15, 2007 - June 15, 2008

Goal #1

Definition:		**Dosing of First Patient in Phase Ib Clinical Trial**
Issues:		
	A	Engage CRO; design clinical protocol
	B	Establish clinical trial sites; complete manufacturing of clinical drug substance
	C	Dose first patient
Descriptor		Critical Path
Weight		20%
Metric		Timing
Exemplary		4 months from LPV of Phase Ia
Baseline		6 months from LPV of Phase Ia
Pessimistic		8 months from LPV of Phase Ia

Goal #2

Definition:	
Issues:	
A	
B	
C	
Descriptor	
Weight	
Metric	
Exemplary	
Baseline	
Pessimistic	

Goal #3

Definition:	
Issues:	
A	
B	
C	
Descriptor	
Weight	
Metric	
Exemplary	
Baseline	
Pessimistic	

SCHEDULE 5(c)

Change of Control Bonus

Cash Bonus	Company Valuation
$50,000	Greater then $75,000,000 but Less then $100,000,000
$100,000	Greater then $100,000,000 but Less then $150,000,000
$150,000	Greater then $150,000,000 but Less then $200,000,000
$200,000	Greater then $200,000,000

SCHEDULE 6(d)

1. The development of novel naturetic peptides for the treatment of cardiovascular and inflammatory disease in humans.

Exhibit 10.3

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "**Agreement**") is made this 19th day of January, 2007, by and between NILE PHARMACEUTICALS, INC., a Delaware corporation with principal executive offices at 689 5th Avenue, 12th Floor, New York, NY 10022 (the "**Company**"), and MR. DARON EVANS, residing at 3029 Riverside Ave., Jacksonville, FL 32205 (the"**Executive**").

W I T N E S S E T H:

WHEREAS, the Company desires to employ the Executive as Chief Operating Officer of the Company, and the Executive desires to serve the Company in those capacities, upon the terms and subject to the conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Employment.

The Company agrees to employ the Executive, and the Executive agrees to be employed by the Company, upon the terms and subject to the conditions of this Agreement.

2. Term.

The employment of the Executive by the Company as provided in Section 1 shall commence on February 13, 2007 (the "**Effective Date**") and continue for a period of three (3) years from the Effective Date (the "**Term**") unless terminated earlier as set forth in Section 8 and 9 below or by mutual written agreement of the parties hereto. In the event that the Company does not intent to renew this Agreement, the Company shall provide the Executive with a minimum of 120 days written notice prior to the expiration of the Term.

3. Duties; Best Efforts; Place of Performance.

(a) The Executive shall serve as Chief Operating Officer of the Company and shall, subject to the direction of the Chief Executive Officer of the Company, have such powers and perform such duties as are customarily performed by the Chief Operating Officer. The Executive shall also have such other powers and duties as may be from time to time directed by the Chief Executive Officer of the Company, provided that the nature of the Executive's powers and duties so prescribed shall not be inconsistent with the Executive's position and duties herein.

(b) The Executive shall devote substantially all of his business time, attention and energies to the business and affairs of the Company and shall use his best efforts to advance the best interests of the Company and shall not during the Term be actively engaged in any other business activity, whether or not such business activity is pursued for gain, profit or other pecuniary advantage, that will interfere with the performance by the Executive of his duties hereunder or the Executive's availability to perform such duties or that will adversely affect, or negatively reflect upon, the Company.

(c) The duties to be performed by the Executive hereunder shall be performed primarily at the office of the Company, which shall be located in or within close proximity to the San Francisco, California, or such other location as the Company and Executive may mutually agree, provided, however, that the Executive understands and agrees that his position may require travel outside of the office.

4. Compensation. As full compensation for the performance by the Executive of his duties under this Agreement, the Company shall pay the Executive as follows:

(a) Base Salary. The Company shall pay the Executive a base salary (the "**Base Salary**") equal to One Hundred Seventy Five Thousand Dollars ($175,000) per annum, payable during the Term in accordance with the Company's normal payroll practices.

(b) Signing Bonus. The Company shall pay to the Executive a one time cash payment of Twenty Five Thousand Dollars ($25,000) upon the Effective Date of this Agreement.

(c) Performance Bonus. The Company shall annually pay the Executive a proportionate share (based on the assigned weight of each of the Performance Milestones (as defined below) of Fifty Thousand Dollars ($50,000) upon the successful completion of annual corporate or individual performance milestones (the "**Performance Milestones**") at the "Realistic" metric. If Performance Milestones are achieved at the "Stretch" metric, the Company shall pay you a proportionate share of Sixty Thousand Dollars ($60,000). The Performance Milestones and the metrics for the first year of the Term shall be agreed upon by the Company and the Executive and attached hereto as Schedule 4(c). Thereafter, the Performance Milestones shall be amended each subsequent year during the Term upon the mutual agreement of the Company and the Executive at least 30 days prior to the beginning of such year.

(d) Withholding. The Company shall withhold all applicable federal, state and local taxes and social security and such other amounts as may be required by law from all amounts payable to the Executive under this Section 4.

(e) Equity.

(i) Employment Options. The Company shall grant to the Executive stock options pursuant to the Company's 2005 Stock Option Plan (the "**Employment Options**") immediately after the closing of the next round of financing to purchase that number of shares representing one percent (1%) of the outstanding common stock of the Company, par value $0.001 per share (the "**Common Stock**"), on a fully diluted basis as of the grant date. The Employment Options shall vest and become exercisable in three (3) equal installments on the day before each anniversary of this Agreement at an exercise price equal to Fair Market Value (as determined the Company's 2005 Stock Plan) (the "**Exercise Price**") of a share of common stock on the date of grant.

(ii) Performance Options. The Company shall grant to the Executive stock options pursuant to the Company's 2005 Stock Option Plan (the "**Performance Options**") immediately after the closing of the next round of financing to purchase that number of shares representing one percent (1%) of the outstanding common stock on a fully diluted basis as of the grant date. Each year during the Term, a proportionate share (based on the assigned weights of each of the Performance Milestones) of that portion of the Performance Options representing 0.4% of the outstanding common stock on the date of grant shall become vested and immediately exercisable for Performance Milestones that are achieved during that year at the "Stretch" metric. Similarly, a proportionate share of 0.33% of the outstanding shares shall become vested and immediately exercisable for Performance Milestones that are achieved during the year at the "Realistic" metric.

(iii) Technology Options. In the event that the Company acquires by license, acquisition or otherwise, an additional biotechnology product or series of biotechnology products (a "**Technology**") for development that is first identified by the Executive or the Company's management, then the Company shall grant to the Executive options (the "**Technology Options**") to purchase a number of shares of Common Stock as follows:

(1) One-half percent (0.5%) of the then Fully Diluted Outstanding shares of Common Stock of the Company on a for a Technology that is in pre-clinical development; and

(2) One percent (1%) of the then Fully Diluted Outstanding shares of Common Stock of the Company for a Technology that is in human clinical trials.

For purposes of this Agreement, "Fully Diluted Basis" shall mean shall the number of shares of Common Stock that would be outstanding upon the conversion of all outstanding shares of Preferred Stock outstanding from time to time, plus the shares of Common Stock issuable upon conversion or exercise, as the case may be, of all securities of the Corporation convertible into, exercisable for, or exchangeable for, directly or indirectly, shares of Common Stock of the Corporation, including but not limited to, options and warrants to purchase Common Stock that are currently exercisable by the holder thereof or which will become exercisable within 90 days of determining event.

Any such Technology Options issued to the Executive shall be exercisable for a period of five (5) years at an exercise price equal to the Fair Market Value (as determined under the Company's 2005 Stock Plan) of the Common Stock on the date of the grant of such Technology Options.

(f) Expenses.

(i) Moving Expenses. The Company shall reimburse you in an amount up to thirty five thousand dollars ($35,000) for qualified moving expenses incurred by you in connection with your relocation to California.

(ii) Company Expenses. The Company shall reimburse the Executive for all normal, usual and necessary expenses incurred by the Executive in furtherance of the business and affairs of the Company, including reasonable travel and entertainment, upon timely receipt by the Company of appropriate vouchers or other proof of the Executive's expenditures and otherwise in accordance with any expense reimbursement policy as may from time to time be adopted by the Company.

(g) Note. The Company shall loan to the Executive an amount equal to Forty Seven Thousands Dollars ($47,000.00) in order to assist the Executive in the satisfaction of certain obligations owed to the Executive's prior employer, which will be evidenced by a Note bearing interests at 4.75%. The Note will be repaid to the Company in three annual installments that will be subtracted from the Executive's Performance Bonus. In the event that the Executive's employment is terminated pursuant to Section 8 or 9 prior to the end of the Term, then the Executive shall repay the Note within 10 business days of such termination.

(h) Other Benefits. The Executive shall be entitled to all rights and benefits for which he shall be eligible under any benefit or other plans (including, without limitation, dental, medical, vision, medical reimbursement and hospital plans, pension plans, employee stock purchase plans, profit sharing plans, bonus plans and other so-called "fringe benefits") as the Company shall make available to its senior executives from time to time. Specifically, the Company shall pay the premiums relating to personal life insurance coverage for Executive in an amount equal to One Million Dollars ($1,000,000). In the event that the Company does not have appropriate medical, dental and vision plans in place on the Effective Date, the Company shall reimburse the Executive for the cost of COBRA premiums associated with his continued coverage under the plans of his prior employer.

(i) Vacation. The Executive shall, during the Term, be entitled three (3) weeks of vacation per annum, in addition to holidays observed by the Company. The Executive shall not be entitled to carry any vacation forward to the next year of employment and shall not receive any compensation for unused vacation days.

5. Confidential Information and Inventions.

(a) The Executive recognizes and acknowledges that in the course of his duties he is likely to receive confidential or proprietary information owned by the Company, its affiliates or third parties with whom the Company or any such affiliates has an obligation of confidentiality. Accordingly, during and after the Term, the Executive agrees to keep confidential and not disclose or make accessible to any other person or use for any other purpose other than in connection with the fulfillment of his duties under this Agreement, any Confidential and Proprietary Information (as defined below) owned by, or received by or on behalf of, the Company or any of its affiliates. "**Confidential and Proprietary Information**" shall include, but shall not be limited to, confidential or proprietary scientific or technical information, data, formulas and related concepts, business plans (both current and under development), client lists, promotion and marketing programs, trade secrets, or any other confidential or proprietary business information relating to development programs, costs, revenues, marketing, investments, sales activities, promotions, credit and financial data, manufacturing processes, financing methods, plans or the business and affairs of the Company or of any affiliate or client of the Company. The Executive expressly acknowledges the trade secret status of the Confidential and Proprietary Information and that the Confidential and Proprietary Information constitutes a protectable business interest of the Company. The Executive agrees: (i) not to use any such Confidential and Proprietary Information for strictly personal use or for others; and (ii) not to permanently remove any Company material or reproductions (including but not limited to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof from the Company's offices at any time during his employment by the Company, except as required in the execution of the Executive's duties to the Company, provided; however, that the Executive shall not be prevented from using or disclosing any Confidential and Proprietary Information:

(i) that Executive can demonstrate was known to him prior to the effective date of that certain Confidential Disclosure Agreement entered into between the Parties dated November 16, 2006;

(ii) that is now, or becomes in the future, available to persons who are not legally required to treat such information as confidential unless such persons acquired the Confidential and Proprietary Information through acts or omissions of Executive;

(iii) that is within the Executive's general business or industry knowledge, know-how or expertise; or

(iv) that he is compelled to disclose pursuant to the order of a court or other governmental or legal body having jurisdiction over such matter.

(b) The Executive agrees to return immediately all Company material and reproductions (including but not limited, to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof in his possession to the Company upon request and in any event immediately upon termination of employment.

(c) Except with prior written authorization by the Company, the Executive agrees not to disclose or publish any of the Confidential and Proprietary Information, or any confidential, scientific, technical or business information of any other party to whom the Company or any of its affiliates owes a legal duty of confidence, at any time during or after his employment with the Company.

(d) The Executive agrees that all inventions, discoveries, improvements and patentable or copyrightable works, relating to the Company's Business (as defined below). ("**Inventions**") initiated, conceived or made by him, either alone or in conjunction with others, during the Term shall be the sole property of the Company to the maximum extent permitted by applicable law and, to the extent permitted by law, shall be "works made for hire" as that term is defined in the United States Copyright Act (17 U.S.C.A., Section 101). For purposes of this Agreement, "**Company's Business**" shall be the development of novel therapeutics for the treatment of human disease, and which are listed on the attached Schedule 5(d) which may be amended from time to time to include additional therapeutics, and in the future, any other business in which it actually devotes substantive resources to study, develop or pursue. The Company shall be the sole owner of all patents, copyrights, trade secret rights, and other intellectual property or other rights in connection therewith. The Executive hereby assigns to the Company all right, title and interest he may have or acquire in all such Inventions; provided; however, that the Board of Directors of the Company may in its sole discretion agree to waive the Company's rights pursuant to this Section 5(c) with respect to any Invention that is not directly or indirectly related to the Company's business. The Executive further agrees to assist the Company in every proper way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights or other rights on such Inventions in any and all countries, and to that end the Executive will execute all documents necessary:

(i) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and

(ii) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

(e) The Executive acknowledges that while performing the services under this Agreement the Executive may locate, identify and/or evaluate patented or patentable inventions having commercial potential in the fields of pharmacy, pharmaceutical, biotechnology, healthcare, technology and other fields which may be of potential interest to the Company or one of its affiliates (the "**Third Party Inventions**"). The Executive understands, acknowledges and agrees that all rights to, interests in or opportunities regarding, all Third-Party Inventions identified by the Company, any of its affiliates or either of the foregoing persons' officers, directors, employees (including the Executive), agents or consultants during the Term shall be and remain the sole and exclusive property of the Company or such affiliate and the Executive shall have no rights whatsoever to such Third-Party Inventions and will not pursue for himself or for others any transaction relating to the Third-Party Inventions which is not on behalf of the Company.

(f) The provisions of this Section 5 shall survive any termination of this Agreement.

6. Non-Competition and Non-Solicitation.

(a) The Executive understands and recognizes that his services to the Company are special and unique and that in the course of performing such services the Executive will have access to and knowledge of Confidential and Proprietary Information (as defined in Section 5) and the Executive agrees that:

(i) during the Term;

(ii) for a period of six (6) months following the expiration of the Term;

(iii) for a period of six (6) months from the date of termination if during the Term the Company terminates this Agreement pursuant to Section 8(a);

(iv) for a period of twelve (12) months if the Executive's employment is terminated by the Company during the Term pursuant to Section 8(b); and

(v) for a period of twelve (12) months if this Agreement is terminated by Executive other than pursuant to Section 9

Executive shall not in any manner, directly or indirectly, on behalf of himself or any person, firm, partnership, joint venture, corporation or other business entity ("**Person**"), enter into or engage in any business which is directly or indirectly competitive with the Company Business, either as an individual for his own account, or as a partner, joint venturer, owner, executive, employee, independent contractor, principal, agent, consultant, salesperson, officer, director or shareholder of a Person in a business competitive with the Company within the geographic area of the Company's Business, which is deemed by the parties hereto to be worldwide; provided; however, if a Person's business has multiple lines or segments, some of which are not competitive with the Company's Business, nothing herein shall prevent the Executive from being employed by, working for or assisting that line or segment of a Person's business that is not competitive with the Company's Business. The Executive acknowledges that, due to the unique nature of the Company's Business, the loss of any of its clients or business flow or the improper use of its Confidential and Proprietary Information could create significant instability and cause substantial damage to the Company and its affiliates and therefore the Company has a strong legitimate business interest in protecting the continuity of its business interests and the restriction herein agreed to by the Executive narrowly and fairly serves such an important and critical business interest of the Company. Notwithstanding the foregoing, nothing contained in this Section 6(a) shall be deemed to prohibit the Executive from acquiring or holding, solely for investment, publicly traded securities of any corporation or other entity, some or all of the activities of which are competitive with the business of the Company so long as such securities do not, in the aggregate, constitute more than three percent (3%) of any class or series of outstanding securities of such corporation or other entity. The provisions of this Section 6(a) shall not, however, apply if the Executive's employment is terminated upon a Change of Control (as defined in 8(b) below).

(b) During the Term and for a period of twelve (12) months (or six (6) months in the case of clause (b)(iii) below) thereafter, the Executive shall not, directly or indirectly, without the prior written consent of the Company:

(i) solicit or induce any employee of the Company or any of its subsidiaries or Two River Group Holdings, LLC ("Two River") to leave the employ of the Company or such subsidiaries or Two River; or hire for any purpose any employee of the Company or its subsidiaries or Two River who has left the employment of the Company or any subsidiary or Two River if such employment would be in violation of such employee's non-competition agreement with the Company or any such subsidiary or Two River; or

(ii) solicit or accept employment or be retained by any Person who, at any time during the term of this Agreement, was an agent, client or customer of the Company or any of its subsidiaries or Two River where his position will be related to and competitive with the business of the Company or any such subsidiaries or Two River; or

(iii) solicit or accept the business of any agent, client or customer of the Company or any of its subsidiaries or Two River with respect to products or services similar to and competitive with those provided or supplied by the Company or any of its subsidiaries.

(c) The Executive and Company mutually agree that both during the Term and at all times thereafter, neither party shall directly or indirectly disparage, whether or not true, the name or reputation of the other party, and in the case of the Company including any officer, director or material shareholder of the Company. Notwithstanding the foregoing, nothing in this Agreement shall preclude the parties hereto or their successors from making truthful statements in the proper performance of their jobs or that are required by applicable law, regulation or legal process, and the parties shall not violate this provision in making truthful statements in response to disparaging statements made by the other party.

(d) In the event that the Executive materially breaches any provisions of Section 5 or this Section 6, then, in addition to any other rights which the Company may have, the Company shall be entitled to seek injunctive relief to enforce the restrictions contained in such Sections which injunctive relief shall be in addition to any other rights or remedies available to the Company under the law or in equity.

(e) The right and remedy enumerated in Section 6(d) shall be independent of and shall be in addition to and not in lieu of any other rights and remedies available to the Company at law or in equity. If any of the covenants contained in this Section 6, or any part of any of them, is hereafter construed or adjudicated to be invalid or unenforceable, the same shall not affect the remainder of the covenant or covenants or rights or remedies which shall be given full effect without regard to the invalid portions. If any of the covenants contained in this Section 6 is held to be invalid or unenforceable because of the duration of such provision or the area covered thereby, the parties agree that the court making such determination shall have the power to reduce the duration and/or area of such provision and in its reduced form such provision shall then be enforceable. No such holding of invalidity or unenforceability in one jurisdiction shall bar or in any way affect the Company's right to the relief provided in this Section 6 or otherwise in the courts of any other state or jurisdiction within the geographical scope of such covenants as to breaches of such covenants in such other respective states or jurisdictions, such covenants being, for this purpose, severable into diverse and independent covenants.

(f) In the event that an actual proceeding is brought in equity to enforce the provisions of Section 5 or this Section 6, the Executive shall not urge as a defense that there is an adequate remedy at law nor shall the Company be prevented from seeking any other remedies which may be available. The Executive agrees that he shall not raise in any proceeding brought to enforce the provisions of Section 5 or this Section 6 that the covenants contained in such Sections limit his ability to earn a living.

(g) The provisions of this Section 6 shall survive any termination of this Agreement, provided that the Company has not breached its obligations under this Agreement.

7. Representations and Warranties by the Executive. The Executive hereby represents and warrants to the Company as follows:

(a) Neither the execution or delivery of this Agreement nor the performance by the Executive of his duties and other obligations hereunder violate or will violate statute or law or conflict with or constitute a default or breach of any covenant or obligation, including without limitation any non-competition restrictions, under (whether immediately, upon the giving of notice or lapse of time or both) any prior employment agreement, contract, or other instrument to which the Executive is a party or by which he is bound. Notwithstanding the foregoing, the Executive makes no representation as to the enforceability of the provision in Section 6.

(b) The Executive has the full right, power and legal capacity to enter and deliver this Agreement and to perform his duties and other obligations hereunder. This Agreement constitutes the legal, valid and binding obligation of the Executive enforceable against him in accordance with its terms. No approvals or consents of any persons or entities are required for the Executive to execute and deliver this Agreement or perform his duties and other obligations hereunder. Notwithstanding the foregoing, the Executive makes no representation as to the enforceability of the provision in Section 6.

8. Termination by the Company. The Executive's employment hereunder shall be terminated as follows:

(a) The Executive's employment hereunder shall be terminated automatically upon the Executive's death.

(b) The Company may terminate the Executive for "Cause." Any of the following actions by the Executive shall constitute "**Cause**":

(i) Willful failure to perform the duties or obligations hereunder or willful misconduct by the Executive in respect of such duties or obligations, including, without limitation, willful failure, disregard or refusal by the Executive to abide by lawful specific directions received by the Executive from the Board of Directors;

(ii) Any willful, intentional or grossly negligent act by the Executive having the effect of injuring, in a material way, whether financial or otherwise, the business or reputation of the Company or any of its subsidiaries or Two River;

(iii) Any material violation of the material provisions of the Company's Personnel Policies and Procedures Manual, a copy of which has been provided to you;

(iv) The Executive's indictment of any felony or a misdemeanor involving moral turpitude;

(v) Any misappropriation or embezzlement of the property of the Company or its subsidiary (whether or not a misdemeanor or felony); and

(vi) Material breach by the Executive of any of the provisions of Sections 5, 6 or 7 of this Agreement.

In any case where the Executive's action or inaction that may constitute Cause is capable of being cured, such action or inaction shall not constitute Cause if such action or inaction is cured by the Executive within 30 days receipt of written notice from the Company of the action or inaction.

(c) The Executive's employment hereunder may be terminated by the Board of Directors of the Company due to the Executive's Disability. For purposes of this Agreement, a termination for "**Disability**" shall occur (i) when the Chief Executive Officer of the Company has provided a written termination notice to the Executive supported by a written statement from a reputable independent physician to the effect that the Executive shall have become so physically or mentally incapacitated as to be unable to resume, even with any reasonable accommodations, within the ensuing twelve (12) months, his employment hereunder by reason of physical or mental illness or injury, or (ii) upon rendering of a written termination notice by the Chief Executive Officer of the Company after the Executive has been unable, even with any reasonable accommodations, to substantially perform his duties hereunder for one hundred twenty (120) or more consecutive days, or more than one hundred eighty (180) days in any consecutive twelve month period, by reason of any physical or mental illness or injury. For purposes of this Section 8(c), the Executive agrees to make himself available and to cooperate in any reasonable examination by a reputable independent physician retained by the Company.

(d) The Executive's employment hereunder may be terminated by the Board of Directors of the Company (or its successor) upon the occurrence of a Change of Control. For purposes of this Agreement, "**Change of Control**" means a merger, acquisition or other business combination resulting in (i) the acquisition of all or substantially all of the Company's then outstanding securities (not including in the securities beneficially owned by such person), or (ii) the disposition by the Company (whether direct or indirect, by sale of assets or stock, merger, consolidation or otherwise) of all or substantially all of its business and/or assets in one transaction or series of related transactions (other than a merger effected exclusively for the purpose of changing the domicile of the Company).

9. Termination by Executive. Executive may terminate his employment as follows:

(a) at any time, for any reason or no reason at all, upon not less than sixty (60) days prior written notice to the Company, which may be waived by the Company;

(b) at any time for "**Good Reason**" which shall constitute:

(i) an actual diminution by the Company of the Executive's title or duties;

(ii) a material breach by the Company of any of the provisions contained herein, which is not cured by the Company within 30 days of written notice by the Executive to the Company; and

(iii) the Company requiring that the Executive relocate outside of the San Francisco metropolitan area.

10. Compensation upon Termination.

(a) If the Executive's employment is terminated pursuant to Section 8(a) or 8(c), (i) the Company shall pay to the Executive or to the Executive's estate, as applicable, (i) his Base Salary for a period of six (6) months thereafter; (ii) expense reimbursement amounts through the date of his Death or Disability, (iii) any accrued but unpaid performance bonus for a year prior to the year in which the Executive's employment is terminated; (iv) a pro rata performance bonus for the year in which the Executive's employment is terminated; and (v) all Employment Options shall vest immediately and become exercisable.

(b) If the Executive's employment is terminated pursuant to Section 8(b) or 9(a), then the Company shall pay to the Executive his Base Salary, accrued but unpaid Performance Bonus and expense reimbursement through the date of his termination. The Executive shall have no further entitlement to any other compensation or benefits from the Company except as provided in the Company's compensation and benefit plans. All Employment Options and Performance Options that have not previously vested shall expire immediately.

(c) If the Executive's employment is terminated (i) by the Company pursuant to Section 8(d), (ii) by the Company other than pursuant to Section 8(a), (b), or (c), or (iii) if the Executive terminates his employment pursuant to Section 9(b), then (1) the Company shall continue to pay to the Executive his Base Salary, Performance Bonus (based on the assumption that the Realistic metric is met) and benefits for a period of six (6) months following such termination; (2) pay the Executive any accrued but unpaid Performance Bonus for a year prior to the year in which the Executive's employment is terminated and a pro rata Performance Bonus for the year in which the Executive's employment is terminated (based on the assumption that the Realistic metric is met); (3) pay the Executive any expense reimbursement amounts owed through the date of termination; and (4) all unvested Employment Options and Performance Options shall vest and become exercisable immediately and all Employment Options and Performance Options shall remain exercisable for a period of not less than five (5) years.

(d) If the Executive's employment is terminated as a result of a Change of Control, then (i) the Company shall continue to pay to the Executive his Base Salary, Performance Bonus (based on the assumption that the Realistic metric is met) and benefits for a period of twelve (12) months following such termination; (ii) pay the Executive any accrued but unpaid Performance Bonus for a year prior to the year in which the Executive's employment is terminated and a pro rata Performance Bonus for the year in which the Executive's employment is terminated (based on the assumption that the Realistic metric is met); (iii) pay the Executive any expense reimbursement amounts owed through the date of termination; and (iv) all unvested Employment Options and Performance Options shall vest and become exercisable immediately and all Employment Options and Performance Options shall remain exercisable for a period of not less than five (5) years

(e) Notwithstanding anything to the contrary herein or in Section 10 or otherwise in the Company's 2005 Stock Option Plan, following termination of the Executive's employment other than by the Corporation for Cause or by the Executive during the Term without Good Reason, the Executive shall have a period of no less than six (6) months to exercise any and all vested Employment Options and Performance Options; provided, however, if the Company sends to the Executive a non-renewal notice provided for under Section 2 hereof, the Executive shall have a period of no less than twelve (12) months after the termination of his employment to exercise any and all vested Employment Options and Performance Options .

(f) This Section 10 sets forth the only obligations of the Company with respect to the termination of the Executive's employment with the Company, and the Executive acknowledges that, upon the termination of his employment, he shall not be entitled to any payments or benefits which are not explicitly provided in Section 10.

(g) The provisions of this Section 10 shall survive any termination of this Agreement.

11. Miscellaneous.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without giving effect to its principles of conflicts of laws.

(b) Any dispute arising out of, or relating to, this Agreement or the breach thereof (other than Sections 5 or 6 hereof), or regarding the interpretation thereof, shall be exclusively decided by binding arbitration conducted in New York in accordance with the rules of the American Arbitration Association (the "**AAA**") then in effect before a single arbitrator appointed in accordance with such rules. Judgment upon any award rendered therein may be entered and enforcement obtained thereon in any court having jurisdiction. The arbitrator shall have authority to grant any form of appropriate relief, whether legal or equitable in nature, including specific performance. Each of the parties agrees that service of process in such arbitration proceedings shall be satisfactorily made upon it if sent by registered mail addressed to it at the address referred to in paragraph (g) below. The costs of such arbitration shall be borne proportionate to the finding of fault as determined by the arbitrator. Judgment on the arbitration award may be entered by any court of competent jurisdiction.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

(c) This Agreement, and the Executive's rights and obligations hereunder, may not be assigned by the Executive. The Company may assign its rights, together with its obligations, hereunder in connection with any sale, transfer or other disposition of all or substantially all of its business or assets provided the assignee entity which succeeds to the Company expressly assumes the Company's obligations hereunder and complies with the terms of this Agreement.

(d) This Agreement cannot be amended orally, or by any course of conduct or dealing, but only by a written agreement signed by the parties hereto.

(e) The failure of either party to insist upon the strict performance of any of the terms, conditions and provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance therewith, and such terms, conditions and provisions shall remain in full force and effect. No waiver of any term or condition of this Agreement on the part of either party shall be effective for any purpose whatsoever unless such waiver is in writing and signed by such party.

(f) All notices, requests, consents and other communications, required or permitted to be given hereunder, shall be in writing and shall be delivered personally or by an overnight courier service or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at the addresses set forth on the first page of this Agreement, and shall be deemed given when so delivered personally or by overnight courier, or, if mailed, five (5) days after the date of deposit in the United States mails. Either party may designate another address, for receipt of notices hereunder by giving notice to the other party in accordance with this paragraph (g).

(g) This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof. No representation, promise or inducement has been made by either party that is not embodied in this Agreement, and neither party shall be bound by or liable for any alleged representation, promise or inducement not so set forth.

(h) As used in this Agreement, "affiliate" of a specified Person shall mean and include any Person controlling, controlled by or under common control with the specified Person.

(i) The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(j) This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

12. Certain Tax Provisions.

(a) Section 409A. Any payment otherwise required under this Agreement or any other plan or arrangement of the Company to be made to the Executive after a termination of Executive's employment that the Company reasonably determines is subject to Section 409A(a)(2)(B)(i) of the Internal Revenue Code of 1986, as amended (the "Code") shall not be paid or payment commenced until the later of (a) six months after the date of the Executive's "separation from service" (within the meaning of Section 409A of the Code) and (b) the payment date or commencement date specified in this Agreement for such payment(s). On the earliest date on which such payment(s) can be made or commenced without violating the requirements of Section 409A(a)(2)(B)(i) of the Code, the Company shall pay the Executive, in a single lump sum, an amount equal to the aggregate amount of all payments delayed pursuant to the preceding sentence. Such delay will not affect the timing of any installments or other payments otherwise payable after the delay period imposed under Section 409. In addition, other provisions of this Agreement or any other such plan or arrangement notwithstanding, the Company shall have no right to accelerate or delay any such payment or to make any such payment as the result of any specific event except to the extent permitted under Section 409A.

(b) Section 280G. Notwithstanding anything to the contrary contained in this Agreement, to the extent that any of the payments and benefits provided for under this Agreement or any other agreement or arrangement between the Executive and the Company (collectively, the "Payments") constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this Section 13(b), would be subject to the excise tax imposed by Section 4999 of the Code, then the Payments shall be payable either (i) in full or (ii) as to such lesser amount which would result in no portion of such Payments being subject to excise tax under Section 4999 of the Code; whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the Executive's receipt on an after-tax basis, of the greatest amount of economic benefits under this Agreement, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. Unless the Executive and the Company otherwise agree in writing, any determination required under this Section 12(b) shall be made in writing by the Company's independent public accountants (the "Accountants"), whose reasonable determination shall be conclusive and binding upon the Executive and the Company for all purposes. For purposes of making the calculations required by this Section 12(b), the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of the Sections 280G and 4999 of the Code. The Executive and the Company shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 12(b). If this Section 12(b) is applied to reduce an amount payable to the Executive, and the Internal Revenue Service successfully asserts that, despite the reduction, the Executive has nonetheless received payments which are in excess of the maximum amount that could have been paid to him without being subjected to any excise tax, then, unless it would be unlawful for the Company make such a loan or similar extension of credit to the Executive, the Executive may repay such excess amount to the Company though such amount constitutes a loan to you made at the date of payment of such excess amount, bearing interest at 120% of the applicable federal rate (as determined under section 1274(d) of the Code in respect of such loan).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

NILE PHARMACEUTICALS, INC.

By: /s/ Allan Gordon

Name: Allan Gordon, M.D.
Title: President & Chief Executive Officer
Date: January 19, 2007

EXECUTIVE

By: /s/ Daron Evans

Name: Daron Evans
Date: January 19, 2007

SCHEDULE 4(c)

SCHEDULE 5(d)

1. The development of novel naturetic peptides for the treatment of cardiovascular and inflammatory disease in humans.

Exhibit 10.4

Amendment No. 1 to

EMPLOYMENT AGREEMENT

This Amendment No. 1 (the "Amendment") made this 19th day of August, hereby amends that certain EMPLOYMENT AGREEMENT (the "**Agreement**") dated January 19, 2007, by and between NILE PHARMACEUTICALS, INC., a Delaware corporation with principal executive offices at 2850 Telegraph Ave., Berkeley, CA 94704 (the "**Company**"), and MR. DARON EVANS, residing at 3029 Riverside Avenue, Jacksonville, FL 32205 (the"**Executive**"). Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Agreement.

The Agreement is hereby amended as follows:

1. Note Repayment Bonus. The Company shall pay to you a bonus (the "Performance Bonus") in the amount of $64,969.41, which you agree to use to repay $47,785.00 to the Company, representing the principal amount and all accrued but unpaid interest on the Note described in Section 3(g) of the Agreement. The Company shall withhold all applicable taxes related to the Note Repayment Bonus.

2. Performance Bonus.The Performance Bonus shall be amended to provide that the Executive shall be eligible to receive a proportionate share (based on the assigned weight of each of the Performance Milestones (as defined below) of $28,344 upon the successful completion of annual corporate or individual Performance Milestones at the "Realistic" metric. If Performance Milestones are achieved at the "Stretch" metric, the Company shall pay you a proportionate share of $38,344.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

NILE THERAPEUTICS, INC.

By: /s/ Peter M. Strumph

Name: Mr. Peter M. Strumph
Title: Chief Executive Officer

EXECUTIVE

By: /s/ Daron Evans

Name: Mr. Daron Evans

Exhibit 10.5

August 7, 2007

Ms. Jennifer Hodge
812C Lyon Street
San Francisco, CA 94115

Dear Ms. Hodge:

We are pleased to offer you the position of Vice President of Clinical Development for Nile Therapeutics, Inc. ("Nile"). This letter (the "Letter") sets forth the proposed terms of your employment with Nile:

1. You shall serve as Vice President of Clinical Development of Nile and shall have such powers and perform such duties as are customarily performed by the Vice President of Clinical Development. You shall report directly to Chief Financial Officer.

2. You shall receive an annual base salary equal to One Hundred Seventy Thousand Dollars ($170,000), payable in accordance with Nile's payroll practices.

3. You will receive an annual bonus of up to 30% of your base salary based upon the successful accomplishment of individual and corporate performance goals to be agreed upon annually between you and the Chief Executive Officer of Nile, which amount shall be pro-rated for the year 2007. Any performance bonus shall be payable on or about December 31st of each year.

4. Nile shall grant to you stock options pursuant to the Company's 2005 Stock Option Plan (the "Employment Options") immediately after the closing of the next round of financing to purchase that number of shares representing one percent (1%) of the outstanding common stock of the Company, par value $0.001 per share (the "Common Stock"), on a fully diluted basis as of the grant date. The Employment Options shall have an exercise price equal to Fair Market Value (as determined the Company's 2005 Stock Plan) (the "Exercise Price") of a share of Common Stock on the date of grant. The Employment Options shall be subject to the terms and conditions of the Plan and shall vest and become exercisable in accordance with the following schedule:

   a. 25% of the Employment Options shall become exercisable on the first anniversary of the Effective Date; and

b. thereafter, 2 and 1/12% of the Employment Options shall become exercisable on the last day of each calendar month until all remaining Employment Options are fully vested and exercisable (each date on which Employment Options vest is hereinafter referred to as a "Vesting Date").

c. For purposes of this Agreement, “Fully Diluted Basis” shall mean the number of shares of Common Stock that would be outstanding upon the conversion of all outstanding shares of preferred stock of the Company (the “Preferred Stock”) outstanding at the grant date, plus the shares of Common Stock issuable upon conversion or exercise, as the case may be, of all securities of the Company convertible into, exercisable for, or exchangeable for, directly or indirectly, shares of Common Stock, which are currently exercisable by the holder thereof or which will become exercisable within 90 days of the grant date.

5. In the event that Nile acquires by license, acquisition or otherwise, an additional biotechnology product for development that is first identified by you, then Nile shall grant to you options (the “Technology Options”) to purchase a number of shares of Common Stock as follows:

a. One-half percent (0.5%) of the then Fully Diluted Outstanding shares of Common Stock of the Company for a product that is in pre-clinical development; and

b. One percent (1%) of the then Fully Diluted Outstanding shares of Common Stock of the Company for a product that is in human clinical trials.

The Technology Options shall have an exercise price equal to the fair market value of Nile’s Common Stock as of the date of the granting of the Technology Options, and shall be exercisable for a period of five (5) years.

6. Nile will reimburse you for all normal, usual and necessary expenses incurred in furtherance of the business and affairs of Nile, including reasonable travel and entertainment, upon timely receipt by Nile of appropriate vouchers or other proof of your expenditures and otherwise in accordance with any expense reimbursement policy as may from time to time be adopted by Nile.

7. You shall be entitled to four (4) weeks of vacation, sick and personal days per year.

8. Your employment will be on an at-will basis and shall commence on August 31, 2007, or such other time as may be agreed to by you and Nile.

9. You shall be entitled to participate in the group medical policy of Nile. Nile will pay for health and dental insurance premiums for you at the basic level insurance plan. Should you desire to enroll in the higher insurance plan, you will be responsible for the payment of the difference in premium costs between the two plans. You shall be entitled to participate in any other benefits made available to employees of Nile.

10. Confidentiality.

a. You recognize and acknowledge that in the course of your duties you are likely to receive confidential or proprietary information owned by Nile, its affiliates or third parties with whom Nile or any such affiliates has an obligation of confidentiality. Accordingly, during and after the Term, you agree to keep confidential and not disclose or make accessible to any other person or use for any other purpose other than in connection with the fulfillment of your duties under this Agreement, any Confidential and Proprietary Information (as defined below) owned by, or received by or on behalf of, Nile or any of its affiliates. "Confidential and Proprietary Information" shall include, but shall not be limited to, confidential or proprietary scientific or technical information, data, formulas and related concepts, business plans (both current and under development), client lists, promotion and marketing programs, trade secrets, or any other confidential or proprietary business information relating to development programs, costs, revenues, marketing, investments, sales activities, promotions, credit and financial data, manufacturing processes, financing methods, plans or the business and affairs of Nile or of any affiliate or client of Nile. You expressly acknowledge the trade secret status of the Confidential and Proprietary Information and that the Confidential and Proprietary Information constitutes a protectable business interest of Nile. You agree: (i) not to use any such Confidential and Proprietary Information for strictly personal use or for others; and (ii) not to permanently remove any Company material or reproductions (including but not limited to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof from Nile's offices at any time during your employment by Nile, except as required in the execution of your duties to Nile, provided; however, that you shall not be prevented from using or disclosing any Confidential and Proprietary Information:

i. that you can demonstrate was known to her prior to the effective date of that certain Confidential Disclosure Agreement entered into between the Parties dated July 10, 2007;

ii. that is now, or becomes in the future, available to persons who are not legally required to treat such information as confidential unless such persons acquired the Confidential and Proprietary Information through acts or omissions by you;

iii. that is within your general business or industry knowledge, know-how or expertise; or

iv. that you are compelled to disclose pursuant to the order of a court or other governmental or legal body having jurisdiction over such matter.

b. You agree to return immediately all Company material and reproductions (including but not limited, to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof in your possession to Nile upon request and in any event immediately upon termination of employment.

c. Except with prior written authorization by Nile, you agree not to disclose or publish any of the Confidential and Proprietary Information, or any confidential, scientific, technical or business information of any other party to whom Nile or any of its affiliates owes a legal duty of confidence, at any time during or after your employment with Nile.

d. You agree that all inventions, discoveries, improvements and patentable or copyrightable works, relating to Nile's Business (as defined below). ("Inventions") initiated, conceived or made by him, either alone or in conjunction with others, during the Term shall be the sole property of Nile to the maximum extent permitted by applicable law and, to the extent permitted by law, shall be "works made for hire" as that term is defined in the United States Copyright Act (17 U.S.C.A., Section 101). For purposes of this Agreement, "Company's Business" shall be the development of novel therapeutics for the treatment of cardiovascular disease and in the future, any other business in which it actually devotes substantive resources to study, develop or pursue. Nile shall be the sole owner of all patents, copyrights, trade secret rights, and other intellectual property or other rights in connection therewith. You hereby assign to Nile all right, title and interest you may have or acquire in all such Inventions; provided; however, that the Board of Directors of Nile may in its sole discretion agree to waive Nile's rights pursuant to this section with respect to any Invention that is not directly or indirectly related to Nile's business. You further agree to assist Nile in every proper way (but at Nile's expense) to obtain and from time to time enforce patents, copyrights or other rights on such Inventions in any and all countries, and to that end you will execute all documents necessary:

   i. to apply for, obtain and vest in the name of Nile alone (unless Nile otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and

   ii. to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

e. You acknowledge that while performing the services under this Agreement you may locate, identify and/or evaluate patented or patentable inventions having commercial potential in the fields of pharmacy, pharmaceutical, biotechnology, healthcare, technology and other fields which may be of potential interest to Nile or one of its affiliates (the "Third Party Inventions"). You understand, acknowledge and agree that all rights to, interests in or opportunities regarding, all Third-Party Inventions identified by Nile, any of its affiliates or either of the foregoing persons' officers, directors, employees (including you), agents or consultants during the Term shall be and remain the sole and exclusive property of Nile or such affiliate and you shall have no rights whatsoever to such Third-Party Inventions and will not pursue for himself or for others any transaction relating to the Third-Party Inventions which is not on behalf of Nile.

f. The provisions of this Section 10 shall survive any termination of your employment.

If you find the foregoing arrangement acceptable, kindly sign where appropriate and return a copy of this Letter to me.

Very truly yours,

By: /s/ Peter M. Strumph
Name: Mr. Peter M. Strumph
Title: President

Agreed and Accepted:

By: /s/ Jennifer Hodge
Name: Ms. Jennifer Hodge
Date: August 7, 2007

Exhibit 10.6

TECHNOLOGY LICENSE AGREEMENT*

This license agreement ("Agreement") is by and between:

MAYO FOUNDATION FOR MEDICAL EDUCATION AND RESEARCH, a Minnesota charitable corporation, located at 200 First Street SW, Rochester, Minnesota 55905-0001 ("MAYO"); and

NILE PHARMACEUTICALS, INC., a Delaware corporation, incorporated by Two River Group Holding, LLC, located at 689 Fifth Avenue, 14th Floor, New York New York 10022 ("NILE"), each a "Party," and collectively, "Parties."

WHEREAS, MAYO desires to make its patent rights and know-how available for the development and commercialization of products for public use and benefit; and

WHEREAS, MAYO is willing to grant and NILE is willing to accept an exclusive license under certain patent rights for the purpose of developing and commercializing such products, as set forth below; and

WHEREAS, NILE will be responsible for designing, developing, marketing, sublicensing and selling any products in accordance with the grant of rights hereunder.

NOW THEREFORE, in consideration of the foregoing and their mutual covenants set forth below, the Parties agree as follows:

Article 1 - Definitions

For purposes of this Agreement, each term defined in this Article will have the meaning specified for it below and will be applicable both to the singular and plural forms:

1.01 "Affiliate" means:

(a) with respect to MAYO means any corporation or other entity within the same "controlled group of corporations" as MAYO or its parent Mayo Foundation. For purposes of this definition, the term "controlled group of corporations" shall have the same definition as Section 1563 of the Internal Revenue Code as of November 10, 1998, but shall include corporations or other entities that, if not a stock corporation, more than 50% of the board of directors or other governing body of such corporation or other entity is controlled by a corporation within the controlled group of corporations of MAYO or Mayo Foundation. MAYO's Affiliates include, but are not limited to: Mayo Foundation; Mayo Collaborative Services; Inc., Rochester Methodist Hospital; Saint Mary's Hospital; Mayo Clinic Rochester; Mayo Clinic Jacksonville, Florida; St. Luke's Hospital, Jacksonville, Florida; Mayo Clinic Arizona; Mayo Clinic Hospital, Arizona; Mayo Regional Practices, P.C., Decorah, Iowa; and Mayo Health System West Central Wisconsin and controlled or wholly-owned subsidiary corporations of all of the above.

*** Confidential treatment has been requested for certain portions of this Exhibit. The confidential portions of this Exhibit have been omitted and filed separately with the Securities and Exchange Commission. Such portions have been marked with "***" at the exact place where material has been omitted.**

(b) with respect to NILE means any corporation or other person controlling, controlled by or under common control with NILE.

(c) The term "control" means the possession, directly or indirectly, of the power to direct the management and policies of a corporation or person, whether through the ownership of voting securities, by contract or otherwise. Control shall be deemed to exist in the case of the ownership, directly or indirectly, of 50% or more of the equity interests in any such corporation.

1.02 **"Change of Control"** shall mean a merger, consolidation, acquisition or the transfer of all, or substantially all, of the business interests of NILE to which this Agreement relates to which NILE is a party where the shareholders of NILE immediately prior to effective date of such merger or consolidation beneficially own, immediately following the effective date of such merger, consolidation, acquisition or other transaction, securities representing less than 50% of the combined voting power of the surviving corporation's then outstanding voting securities.

1.03 **"Commercialization"** means all steps that must be taken to put a Product on the market in the Territory after all necessary regulatory approvals have been obtained, including, without limitation, the manufacturing, marketing, distribution and/or sublicensing of such Product.

1.04 **"Development"** means the process of creating and assembling the data and files necessary to obtain regulatory approval for a Product including, without limitation, all preclinical and clinical research and trials on such Product.

1.05 **"Effective Date"** means 20 January 2006.

1.06 **"FDA"** means the Food and Drug Administration within the Department of Health and Human Services of the United States.

1.07 **"Field"** means all therapeutic indications.

1.08 **"Government Rights"** means rights, if any, of the United States Government to the Patents under Public Law 96-517 and Public Law 98-620, as amended or augmented by other similar laws.

1.09 **"Improvements"** means any and all new developments relating solely to Products made by or arising out of the laboratories of Drs. John Burnett and Ondrej Lisy during the three (3) year period following the Effective Date of this Agreement, including improved methods of manufacture and production techniques, and shall include, but not be limited to, new or additional analogs of the Product, therapeutic indications and developments intended to enhance the safety and efficacy of the Product.

1.10 "Know-How" means all technical information and data, whether or not patented, presently known or learned, invented, or developed by the Drs. John Burnett and Ondrej Lisy that is useful in the Development and Commercialization of a Product and is disclosed to NILE, to the extent that such technical information and data are helpful for the use or practice of the Patents or Know-How as permitted herein.

1.11 **"License Quarter"** begins on the Effective Date, and thereafter begins on the first day of each January, April, July, and October during the Term.

1.12 **"License Year**" begins on the Effective Date, and thereafter begins on the first day of each January during the Term.

1.13 **"Net Sales"** means the amount invoiced by NILE, its Affiliates or Sublicensee for sale of a Product in the Territory to a third party, less the following:

(a) sales, tariff duties, excise or use taxes directly imposed and with reference to particular sales;

(b) credits for defective or returned Products;

(c) regular trade and discount allowances; and

(d) bad debt deductions actually written off during the accounting period;

Leasing, lending, consigning or any other activity by means of which a third party acquires the right to possession or use of a Product will be considered a sale for the purpose of determining Net Sales.

1.14 **"NDA"** shall mean a New Drug Application filed in the United States with the FDA.

1.15 **"Patent or Patents"** means the issued United States and foreign patents and the pending applications set forth in Exhibit A, together with any and all substitutions, extensions, divisionals, continuations, continuations-in-part (to the extent that the subject matter is disclosed and enabled in the parents), or foreign counterparts of such patent applications and patents which issue thereon any where in the world, including reexamined and reissued patents.

1.16 **"Phase II"** means a human clinical trial, the principal purpose of which is to evaluate the effectiveness of the Product for a particular indication in patients with the disease and to determine the common short-term side effects and risks associated with the Product as required in 21 C.F.R. §312. A Phase II study shall be deemed to have been initiated when the first patient has been dosed with the drug substance.

1.17 **"Phase III"** means expanded controlled and uncontrolled human clinical trials performed after Phase II evidence suggesting effectiveness of the Product has been obtained, and is intended to gather the additional information about effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of the Product and to provide an adequate basis for physician labeling, as required in 21 C.F.R. §312. A Phase III study shall also include any other human clinical trial intended to provide the substantial evidence of efficacy necessary to support the filing of an approvable NDA (such as a combined Phase II/Phase III study, or any Phase III study in lieu of a Phase II study) (a "Pivotal Study"), whether or not such study is a traditional Phase III study. A Phase III study shall be deemed to have been initiated when the first patient has been dosed with the drug substance.

1.18 **"Product"** means any method, service or product within the Field, the manufacture, use, offer for sale or sale of which would infringe the Patent rights.

1.19 **"Reasonable Commercial Efforts"** means efforts consistent with those used by comparable biotechnology companies in the United States in research and development projects for therapeutic methods or compositions deemed to have commercial value comparable to the Product.

1.20 **"Reports"** means written summaries for each Product generally describing NILE's efforts with respect to Development and Commercialization of the Product, including:

(a) tests and research completed;

(b) any filings made with any regulatory authorities;

(c) any regulatory approvals received;

(d) a response to any comments that MAYO have made to any earlier Report, including NILE's rationale for rejecting any suggestion contained in such comments;

(e) reports or minutes of any formal meetings with regulatory authorities, whether convened in person or otherwise; and

(f) any other major regulatory event, including but not limited to, placement of a "clinical hold" on a trial.

1.21 **"Sublicensee"** means an entity to 'whom NILE sublicenses the right to offer for sale or sell the Products in the Territory for the Field.

1.22 **"Successful Completion"** of a Phase III clinical trial shall mean a clinical trial that yields data that is sufficiently statistically significant to permit NILE to file a NDA.

1.23 "Valid Claim" means an issued claim of any unexpired patent or claim of any pending patent application included among the Patents, which has not been held unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, which has not been rendered unenforceable through disclaimer or otherwise, and which has not been lost through an interference proceeding or abandoned.

1.24 "Territory" means world-wide.

Article 2 - Development and Commercialization

2.01 Agreements of Nile. NILE agrees to use its commercially reasonable efforts to implement a program of Development and Commercialization of the Product as soon as practically possible. To achieve this goal, NILE agrees to:

(a) conduct a reasonable research and commercial development program to develop a Product;

(b) expend reasonable amounts towards the research and development of such Products;

(c) diligently pursue worldwide regulatory approval of a Product;

(d) commence marketing of a Product within [***] following regulatory approval in the United States.

(e) comply with all applicable laws in performing its obligations under this Agreement, including in connection with obtaining the regulatory approvals; and

(f) perform in good faith all of its obligations under this Agreement.

2.02 Management. NILE and its Affiliates shall assemble a management team, which shall include:

(a) a management team with relevant drug development experience; and

(b) a Board of Directors initially consisting initially of up to five members.

2.03 Scientific Advisory Board. NILE will assemble a Scientific Advisory Board ("SAB") consisting of experienced thought leaders in the area of Congestive Heart Failure. Dr. John Burnett shall serve as the Chairman of the SAB, subject to restrictions, if any, of MAYO's Conflict of Interest Committee, and subject to his reasonable availability. NILE shall compensate MAYO for Dr. Burnett's Know-How in this role at a rate of Fifty Thousand Dollars ($50,000.00) per annum, in addition to reimbursement of reasonable travel expenses. This amount shall be paid quarterly {i.e. by March 31st, June 30th, September 30th and December 31st of each year) in equal installments of Twelve Thousand Five Hundred Dollars ($12,500). It is understood and agreed that Dr. Burnett will not be required to expend more than a maximum of twenty-four (24) days per year in his capacity as Chairman of the SAB,

2.04 Development Plans and Reports. NILE agrees to provide MAYO with the Reports semi-annually, within 30 days of June 30th and December 31st, starting in the second License Year. Such Reports shall be in sufficient detail for MAYO to among other things:

(a) determine whether NILE is using Reasonable Commercial Efforts to pursue the regulatory approvals;

(b) determine whether NILE is using Reasonable Commercial Efforts to develop a Development plan; and

(c) determine whether a Development plan, once developed and implemented, establishes that NILE is using its Reasonable Commercial Efforts for Commercialization of a Product.

2.05 Notification. NILE agrees to notify MAYO within thirty (30) days if NILE determines that all Development efforts have been terminated for all Products in which case MAYO may terminate this Agreement and the licenses granted hereunder without cause upon thirty (30) days prior written notice.

2.06 Consultation Regarding Reports. MAYO shall review the Reports and promptly inform NILE if MAYO reasonably believes that the Development or Commercialization plans presented in the Reports are not adequate for a Product. NILE and MAYO will mutually confer, provided, however, notwithstanding anything to the contrary herein, NILE has the final decision-making authority.

2.07 Receipt of Regulatory Approval. NILE shall notify MAYO within five (5) business days of receiving official notice of any regulatory approval for any Product.

Article 3 - Grant of Rights

3.01 Grant of Rights. MAYO grants to NILE an exclusive, world-wide, royalty-bearing license, with the right to sublicense pursuant to Section 3.06, under the Patents and Improvements, and a nonexclusive right under the Know-How to develop, make, have made, use, sell, import, offer to sell and commercialize Products within the Territory and within the Field.

3.02 Reservation of Rights. The grant of rights in Section 3.01 is subject to the Government Rights of the United States government, if any, in the Patents and Know-How, and subject to MAYO' reservation of rights to make, have made and use the Patents and Products on a royalty-free basis for MAYO' and its Affiliates internal non-commercial clinical, research and education programs.

3.03 All Other Rights Reserved. Except as granted in Section 3.01, or as otherwise expressly granted herein, no other license is granted by MAYO under any intellectual property rights owned or controlled by MAYO, including any patents, know-how, copyrights, proprietary information, and trademarks. All such rights are expressly reserved by MAYO. Except as provided herein, NILE acknowledges that in no event will this Agreement be construed as an assignment by MAYO to NILE of any intellectual property rights.

3.04 Confidentiality. During the Term, and for a period of three years thereafter, each Party hereto agrees to keep confidential by not disclosing to any third party any information (i) relating to this Agreement, including the terms and conditions thereof, or (ii) disclosed by one Party (the “Disclosing Party”) to the other (the “Receiving Party”). The Parties may use this information solely as necessary for complying with the terms and conditions of this Agreement. The obligations of non¬disclosure and non-use will not apply when and to the extent such information:

(a) becomes part of the public domain through no action or fault of the Receiving Party; or

(b) was in the Receiving Party's possession before disclosure by the Disclosing Party, as demonstrated by written records, and was not acquired, directly or indirectly, from the Disclosing Party; or

(c) was received by the Receiving Party from a third party having a legal right to transmit such information.

At MAYO's request, NILE will cooperate fully with MAYO, except financially, in any legal actions taken by MAYO to protect its rights in the Patents and Know-how disclosed hereunder.

For avoidance of doubt, any violation of the obligations stated in this Section 3.04 constitutes a material breach of this Agreement.

3.05 Availability of Product to MAYO. Once a Product becomes commercially available, to the extent permitted by law, NILE will provide Products to MAYO and their Affiliates solely for it and their use for internal clinical, research and education programs in the Field at most favored nation pricing, i.e. no more than the lowest price available to NILE's commercial customers for the Products for use in the Field.

3.06 Sublicensee Actions. Nile may enter into sublicensing agreements under the Patents. Nile shall not receive, or agree to receive, anything of value in lieu of cash or equity as consideration from a third party under a sublicense agreement (excluding (a) any amounts paid to NILE specifically designated for clinical research and development of the Product, or (b) purchases of debt or equity securities of NILE), without the prior written approval of MAYO. Nile agrees that any sublicense agreement shall (i) contain provisions at least as favorable to MAYO for the protection of MAYO's rights and the limitation of MAYO's liability exposure as the terms of this Agreement, including without limitation with respect to name use, limitation of liability and indemnification, and development and commercialization obligations commensurate in scope as those set forth for Nile in this Agreement, (ii) to the fullest extent applicable, contain all rights and obligations due to MAYO contained in this Agreement, (iii) name MAYO as a third party beneficiary and (iv) not permit the sublicensee to grant further sublicenses. Nile shall (i) be and remain responsible for the performance by such sublicensee with the terms of this Agreement, and any action by a sublicensee that would, if conducted by Nile, be a breach of this Agreement, shall be deemed a breach of this Agreement by Nile, and (ii) ascertain, calculate, audit and collect all royalties that become payable by such sublicensee hereunder and take appropriate enforcement action against such Sublicensee for any failure to pay or to properly calculate payments. Any purported sublicense in violation of this Section 3.06 shall be void.

Nile shall furnish to MAYO a true and complete copy of each sublicense agreement and each amendment thereto, within thirty (30) days after the sublicense or amendment has been executed, which copy shall be the Confidential Information of Nile.

Article 4 - Consideration and Royalties

4.01 Initial Consideration.

(a) Upon execution of this Agreement, NILE will pay MAYO an up-front payment of FIVE HUNDRED THOUSAND DOLLARS (US $500,000) as consideration for entering into the Agreement. This initial payment is nonrefundable and is not an advance or creditable against any royalties otherwise due under this Agreement.

(b) MAYO shall be granted FIVE HUNDRED THOUSAND (500,000) shares of common stock, par value $0,001 per share (the "Common Stock") representing ten percent (10%) of the fully diluted stock of NILE as of the date of execution of this Agreement.

4.02 Milestone Payments. NILE or its Sublicensee shall make one-time milestone payments to MAYO as follows:

MILESTONE	MILESTONE PAYMENT
Initiation of the first company sponsored Phase II clinical trial of a Product	[***]
Initiation of the first U.S. company sponsored Phase III clinical trial of a Product	[***]
Successful completion of a U.S. company sponsored Phase III clinical trial of a Product	[***]
Acceptance by the FDA of the first New Drug Application ("NDA") for a Product	[***]
Approval by the FDA of the first NDA for a Product	[***]
Approval by the FDA of an NDA for the first Product in each additional therapeutic indication	[***]
Approval by the FDA of an NDA for each additional Product	[***]

For the avoidance of doubt, "successful completion" of a Phase III clinical trial shall mean one that yields data that is sufficiently statistically significant to permit NILE to file an NDA.

4.03 Milestones Related to Funding from Mayo's Discovery-Translation Program. Within sixty (60) days of the Effective Date, MAYO and NILE shall negotiate milestones for the use of money awarded to Dr. Burnett's program by MAYO's Discovery-Translation Program. If the parties agree to such milestones, the parties will set forth a budget and the proposed milestones in Exhibit B. NILE acknowledges that there is no requirement for MAYO to achieve the milestones. MAYO will not be required to fund any activities except for the amounts agreed upon in Exhibit B. In any event, such amount shall not exceed the award to Dr. Burnett's program of $[***]. For any money over $[***], up to, but not exceeding $[***] (the "Additional Award"), which is spent from the Discovery-Translation award for the Development of a Product, MAYO shall be granted the equivalent dollar value in common stock of NILE, immediately upon the completion of the first equity financing following the use of such Additional Award. The number of shares to be issued to MAYO pursuant to this Section 4.03 shall be determined by dividing the Additional Award by the per share price of the securities sold in such equity financing.

4.04 Earned Royalties. NILE or its Sublicensee will pay MAYO [***] of the Net Sales of Products in the Territory for use in the Field covered by at least one Valid Claim. The Earned Royalties are payable as described in Section 5.01.

4.05 License Maintenance Royalties. In order for NILE to maintain its exclusive license, NILE will pay MAYO a License Maintenance Royalty of [***] in License Year 1 and 2 and a License Maintenance Royalty of [***] in each License Year thereafter. Such License Maintenance Royalties are fully creditable against the Milestone Payments described in Section 4.02 hereto. For the avoidance of doubt the License Milestone Royalty for License Year 1 shall be due on or before 20 January 2007. Failure to make License Maintenance Payments shall be considered a material breach of this Agreement.

4.06 Interest. Any payment that is not made on or before the date when due under this Agreement shall accrue interest thereon from and including such date and until but excluding the date of payment at the rate of one-half percent (0.5%) per month, or, if such rate is in excess of the rate then permitted by applicable laws, at the highest rate so permitted.

4.07 Taxes. NILE is responsible for all applicable taxes (other than net income taxes), duties, import deposits, assessments, and other governmental charges, however designated, that are now or hereafter will be imposed by any authority in or for the Territory, based on or relating to:

(a) the Product or use of the Patents by NILE and/or NILE's Sublicensees; or

(b) the import of the Product into the Territory by NILE and/or NILE's Sublicensees.

Notwithstanding the foregoing, NILE shall not be responsible for any taxes arising from transactions to which MAYO or any of their Affiliates may be parties exclusive of transactions with NILE.

4.08 No Deductions for Taxes. Except as otherwise stated herein, or unless otherwise agreed to in writing by MAYO and NILE, all payments to be made by NILE to MAYO under this Agreement represent net amounts MAYO is entitled to receive, and shall not be subject to any deductions or offsets by NILE for any reason whatsoever. NILE, however, is not responsible for any payments, including income tax, required to be paid by MAYO on funds received from or on behalf of NILE.

4.09 U.S. Currency. All payments to MAYO under this Agreement will be made by draft drawn on a United States bank, and payable in United States dollars.

4.10 Material Breach. It shall be a material breach of this Agreement if NILE shall fail to make any payment pursuant to Article 4 of this Agreement when such payment is due or by the end of any applicable cure period.

Article 5 - Accounting and Reports

5.01 Royalty Reports and Payments. NILE will, after Commercialization of at least one Product, deliver to MAYO on or before 1 June, 1 September, 1 December and 1 March a written report for the previous License Quarter stating, for each Product and for each country in the Territory in "which there are Net Sales:

(a) the number of Products sold during the period covered by the written report;

(b) a description of all deductions from gross receipts applied to determine Net Sales;

(c) amount of royalty due thereupon for the period covered by the written report; and

(d) exchange rates used to calculate the royalties due.

Each such report shall be accompanied by the royalty payment due for such License Quarter, in accordance with this Article 5.

5.02 Audit Rights. NILE agrees to maintain the Records and to require any permitted Sublicensees to maintain the Records. "Records" mean complete and accurate records showing clearly all transactions that are relevant to any sales, costs, expenses and payments under this Agreement, to be kept in a manner consistent with generally accepted accounting principles and standard operating procedures. MAYO shall have the right, at its expense, through a certified public accountant or like person reasonably acceptable to NILE, to examine the records of NILE and its Sublicensees during regular business hours before the Termination or expiration of this Agreement and for three (3) years thereafter, provided that such examination shall not take place more often than once a year and shall be limited to a report on the accuracy of royalty statements and payments. If the audit report for any License Year discloses an underpayment discrepancy in royalties owed by NILE and royalties paid by NILE to MAYO that exceeds [***] of total Net Sales or Sublicense Revenue made until the date of completion of the audit, NILE shall pay the reasonable expense of the audit and pay to MAYO the entire amount of the discrepancy plus interest within thirty (30) days from the date upon which MAYO notified NILE of the discrepancy. Interest shall be computed at the rate which is the prime rate of Citibank N.A. (N.Y.) in effect at 9:00 a.m. on the day that MAYO notifies NILE of the discrepancy. Discrepancies in royalty payments for a License Year identified by the audit report amounting to less than five percent (5%) shall be paid by the end of the License Quarter in which the audit was made.

Article 6 - Representations, Warranties and Indemnification

6.01 Representations and Warranties. MAYO hereby represents and warrants to the best of its counsel's knowledge the following:

(a) MAYO has the full right and power to perform the obligations and grant the License set forth in this Agreement;

(b) There are no outstanding agreements, assignments or encumbrances in existence inconsistent with the provisions of this Agreement.

(c) Subject to Section 3.02, MAYO owns or possesses all right, title and interest in and to the Patents free and clear of all liens, charges, encumbrances or other restrictions or limitations of any kind whatsoever.

(d) Subject to Section 3.02, there are no licenses, options, restriction, liens, rights of third parties, disputes, royalty obligations, proceedings or claims relating to, affecting, or limiting its rights or the rights of NILE under this Agreement, which imposes obligations upon MAYO or gives any rights to MAYO which, in either case, would adversely affect the rights of NILE or the obligations of MAYO under this Agreement.

(e) There is no claim, pending or threatened, of infringement, interference or invalidity regarding, any part or all of the Patents and their use as contemplated in the underlying patent applications as presently drafted or as contemplated under this Agreement.

(f) MAYO has provided a copy of all pending patens and applications for which Dr. Burnett or Dr. Lisy is an inventor.

6.02 No Warranties. Notwithstanding the foregoing, nothing in this Agreement will be construed as:

(a) a warranty or representation by MAYO as to the validity or scope of any of the Patents; or

(b) an obligation to bring or to prosecute actions against third parties for infringement of the Patents; or

(c) a warranty or representation that the manufacture, use, sale, offer for sale or importation of any Product or the use or practice of any of the Patents are free from infringement or misappropriation of a third party's intellectual property rights.

6.03 Disclaimer. MAYO HAS NOT MADE AND PRESENTLY MAKES NO PROMISES, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, REGARDING THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT FOR THE PRODUCTS OR PATENTS. THE KNOW-HOW AND PATENTS PROVIDED OR LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS," "WITH ALL FAULTS," AND "WITH ALL DEFECTS".

NILE is solely responsible for determining whether the Patents and Know-How provided or licensed hereunder have applicability or utility in NILE's manufacturing and design activities. NILE assumes all risk and liability in connection with such determination.

6.04 Indemnification by NILE. NILE will defend, indemnify, and hold harmless MAYO and MAYO's Affiliates from any and all claims, actions, demands, judgments, losses, costs, expenses, damages and liabilities (including but not limited to reasonable attorneys fees and other out-of- pocket expenses incurred in litigation) (collectively, "Claims"), regardless of the legal theory asserted, arising out of or connected with: (a) use by NILE of Patents or Know-How furnished or licensed under this Agreement; (b) development, design, manufacture, distribution, use, sale, or other disposition of products, including Products, by NILE or its transferees or Mayo and/or it Affiliates; and (c) any clinical trial funded or conducted by NILE, unless such Claims are judicially determined to have arisen out of the gross negligence or willful misconduct of MAYO or its Affiliates. As used herein, MAYO and its Affiliates include the trustees, officers, agents, and employees of MAYO and its Affiliates. NILE will, during the Term, carry occurrence-based liability insurance, including products liability and contractual liability, in an amount and for a time period sufficient to cover the liability assumed by NILE hereunder, such amount being at least [***], provided that a lesser amount shall be acceptable to MAYO until such time as the Product enters into human clinical trials. In addition, such policy will name MAYO as an additional-named insured party.

6.05 Additional Waivers. IN NO EVENT WILL MAYO'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, OR FUTURE DAMAGES, EVEN IF MAYO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE WILL MAYO'S LIABILITY OF ANY KIND EXCEED THE TOTAL AMOUNTS WHICH HAVE ACTUALLY BEEN PAID TO MAYO BY NILE AS OF THE DATE OF FILING OF THE ACTION AGAINST MAYO WHICH RESULTS IN THE SETTLEMENT OR AWARD OF DAMAGES.

Article 7 - Term and Termination

7.01 Term. Unless sooner terminated, this Agreement shall continue in full force and effect until the later of (a) the expiration of the last to expire valid claim contained in the Patents and (b) the 20th anniversary of this Agreement.

7.02 Material Breach. MAYO shall be entitled to terminate this Agreement at any time based upon material breach if NILE has failed to cure such material breach within ninety (90) days of receipt of notice by NILE from MAYO that NILE is in breach.

7.03 Termination for Other than Material Breach. NILE may terminate the Agreement without cause upon ninety (90) days prior written notice.

7.04 Termination for Challenge. MAYO may terminate this Agreement by transmitting a notice of termination to NILE in the event NILE challenges the validity or enforceability of any of the Patent Rights in any manner.

7.05 Insolvency of Company. MAYO may terminate this Agreement by transmitting a notice of termination to NILE in the event NILE ceases conducting business in the normal course, becomes insolvent or bankrupt, makes a general assignment for the benefit of creditors, admits in writing its inability to pay its debts as they are due, permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under any statute of any governing authority relating to insolvency or the protection of rights of creditors.

7.06 Effect of Termination. Upon termination of this Agreement, all rights granted therein will immediately revert to MAYO with no further notice or action required on the MAYO's behalf. NILE shall negotiate in good faith for an agreement, which shall be on commercially reasonable terms, under which NILE would provide to MAYO and grant the rights to use full and complete copies of all toxicity, efficacy, and other data generated solely by NILE (including by contractors or agents on their behalf, specifically excluding MAYO) in the course of NILE's efforts to develop Products or obtain governmental approval for the sale of Products, for use in connection with the development and commercialization of Products.

7.07 Survival. The following obligations survive the expiration or termination of this Agreement:

(a) NILE's obligation to supply reports covering the time period up to the date of termination or expiration;

(b) MAYO' right to receive payments, fees, and royalties accrued or accruable from payment at the time of any termination or expiration;

(c) NILE's obligation to maintain records, and MAYO' right to have those records inspected;

(d) any cause of action or claim of MAYO, accrued or to accrue, because of any action or omission by NILE;

(e) NILE's obligations stated in Section 2.06 for data developed prior to termination or expiration, Sections 3.04 and 3.06; the applicable sections of Article 6; Sections 7.06, 7.08 and 7.09; and Article 10; and

(f) MAYO' obligations stated in Section 3.04 and 10.01, and the applicable sections of Articles 6 and 10.

7.08 Inventory. NILE shall notify MAYO within thirty (30) days of the effective date of termination of this Agreement the amounts, if any, of Product that NILE, its Sublicensees and distributors then have in inventory in each country or Territory. At MAYO' election, NILE, its Sublicensees and distributors may sell the Product in that country or Territory if NILE pays royalties thereon in accordance with Sections 4.03 and 5.01. In the event that MAYO does not permit the sale of the inventory, MAYO will direct NILE to return the inventory to MAYO or to destroy the inventory, at the cost of MAYO. Return of Confidential Information. Within thirty (30) days of the effective date of termination of this Agreement, each of the Parties shall return all of the other Party's Confidential Information, including all copies thereof; provided, however, that each Party shall be entitled to retain one copy of all such Confidential Information in its legal department so that any continuing obligations of confidentiality may be determined.

Article 8 - Patent Filing, Prosecution and Maintenance

8.01 Patent Filing, Prosecution and Maintenance. Following execution of this Agreement, NILE shall be responsible for the prosecution and maintenance of all Patents and Patent applications, at NILE's expense, using counsel reasonably acceptable to MAYO, and shall keep MAYO informed of prosecution

8.02 Patent Term Extension. MAYO will have the sole right to decide on which Patent(s) to obtain a patent term extension; provided that MAYO will consider NILE's input on the matter. NILE agrees to do all things which MAYO determines are necessary to ensure the timely and complete filing and prosecution of any application for a patent term extension with the United States Patent and Trademark Office for any Licensed Product. NILE's duties shall include, but not be limited to, providing MAYO with any information and notifications reasonably necessary for obtaining a patent term extension.

Article 9 - Patent Rights Enforcement

9.01 Third Party Litigation. In the event a third party institutes a suit against NILE for patent infringement involving a Product, NILE will promptly inform MAYO and keep MAYO regularly informed of the proceedings. In the event the third party sues or joins MAYO, MAYO will have the right to control the defense of the suit. Each Party will bear its own costs of the suit and any recovery will be shared equally by the Parties.

9.02 Infringement by Third Party. NILE and MAYO will promptly inform the other Party in writing of any alleged infringement of any Patent and provide the other Party with available evidence of such infringement, and MAYO and NILE will have the right to institute an action for infringement of the Patents consistent with the following:

(a) If MAYO and NILE agree to institute suit jointly, then the suit will be brought in the names of both parties. NILE will exercise control over such action, provided, however, that MAYO may, if it so desires, be represented by counsel of its own selection, and at its own expense.

(b) In the absence of an agreement to institute a suit jointly, MAYO may institute suit and, at its option, join NILE as a plaintiff. MAYO will bear the entire cost of such litigation, including attorneys' fees. NILE will cooperate reasonably with MAYO, except financially, in such litigation. MAYO will not settle or enter into a voluntary disposition of the action without NILE's prior written consent.

(c) In the absence of an agreement to institute a suit jointly, and if MAYO determines not to institute a suit, as provided in paragraph (b) of this Section 9.02, then NILE may institute suit and, at its option, join MAYO if MAYO is a necessary party to the litigation. NILE will bear the entire cost of such litigation, including attorneys' fees. MAYO will cooperate reasonably with NILE, except financially, in such litigation NILE will not settle or enter into a voluntary disposition of the action without MAYO's prior written consent.

(d) Absent an agreement to the contrary, any costs under (a) above will be borne equally by the Parties and any recoveries will be shared in proportion to the economic damages suffered by each Party. Otherwise, each Party will bear its own expenses and any recovery will be applied as follows:

(i) first, to reimburse the Party bringing the action;

(ii) second, to reimburse the expenses of the other Party in connection with such action; and

(iii) third, [***] percent ([***]%) to MAYO and [***] percent ([***]%) to NILE.

(e) If either Party institutes a suit under this Section 9.02 and then decides to abandon the suit, it will first provide timely written notice to the other Party of its intention to abandon the suit, and the other Party, if it wishes, may continue prosecution of such suit, provided, however, that the sharing of expenses and of any recovery in such suit will be agreed-upon separately by the Parties.

9.03 Patent Marking. To the extent commercially feasible and customary in the trade, NILE will mark all Products that are manufactured or sold under this Agreement with the number of each issued patent within the Patents that cover such Product(s). Any such marking will be in conformance with the patent laws and other laws of the country of manufacture or sale.

Article 10 - General Provisions

10.01 Name Use. This Agreement does not convey any right to use any of the other Party's names or logos other than where required by law, rule or regulation. Neither Party may use publicly for publicity, promotion, or otherwise, any logo, name, trade name, service mark or trademark of the other Party or its Affiliates, or any simulation, abbreviation or adaptation of the same, or the name of any of the other Party's employee or agent without such other Party's prior, written, express consent other than where required by law, rule or regulation. MAYO's marks include, but are not limited to, the terms “MAYO®” and “MAYO CLINIC®.” Any violation of this Section 10.01 constitutes a material breach of this Agreement.

10.02 Assignment. Nile may assign its rights and obligations under this Agreement to a third party in conjunction with a Change of Control without Mayo's prior written consent; provided that Nile shall remain responsible for the performance of its assignee, the assignee agrees to assume and be bound by the provisions of this Agreement in writing and Nile promptly notifies Mayo of such assignment. Mayo's written consent, which shall not be unreasonably withheld, shall be required prior to any other assignment of Nile's rights or obligations hereunder. Any other purported assignment is void.

10.03 Waiver. The failure of a Party to complain of any default by another Party or to enforce any of such Party's rights, no matter how long such failure may continue, will not constitute a waiver of the Party's rights under this Agreement. The waiver by a Party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other provision. No part of this Agreement may be waived except by the further written agreement of the Parties.

10.04 Governing Law and Jurisdiction. This Agreement is made and performed in Minnesota. It is governed by Minnesota law, but specifically not including Article 2 of the Uniform Commercial Code as enacted in Minnesota. This is not an Agreement for the sale of goods. In addition, no Minnesota conflicts-of-law or choice-of-laws provisions apply to this Agreement. To the extent the substantive and procedural law of the United States would apply to this Agreement, it supersedes the application of Minnesota law. The exclusive for a for actions between the Parties in connection with this Agreement are the State District Court sitting in Olmsted County, Minnesota, or the United States Court for the District of Minnesota. NILE agrees unconditionally that it is personally subject to the jurisdiction of such court.

10.05 Headings. The headings of articles and sections used in this document are for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement.

10.06 Notices. All notices and other business communications between the Parties related to this Agreement shall be in writing, sent by certified mail, addressed as follows:

If to MAYO:

Mayo Foundation for Medical Education and Research
200 First Street SW
Rochester, Minnesota 55905-0001

Attn:	Susan L. Stoddard, Ph.D. Office of Technology Commercialization Mayo Medical Ventures	COPY TO Mayo Legal Attn: General Counsel
Telephone	:507-284-8878	Telephone: 507-284-2650
Facsimile:	507-284-5410	Facsimile: 507-284-0929
Email:	sstoddard@mayo.edu	

Nile Pharmaceuticals, Inc.
689 Fifth Avenue, 14th Floor
New York New York
Attn: David Tanen
Telephone: 212-871-7900
Facsimile: 212-871-7901
Email: dmt@tworiver.com

Notices sent by certified mail shall be deemed delivered on the third day following the date of mailing. A Party may change its address or facsimile number by giving written notice in compliance with this section.

10.07 Limitation of Rights Created. This Agreement is intended only to benefit the Parties hereto and is not intended to confer upon any other person any rights or remedies hereunder.

10.08 Independent Contractors. It is mutually understood and agreed that the relationship between the Parties is that of independent contractors. No Party is the agent, employee, or servant of the other. Except as specifically set forth herein, no Party shall have or exercise any control or direction over the methods by which the other Party performs work or obligations under this Agreement. Further, nothing in this Agreement is intended to create any partnership, joint venture, or lease, expressly or by implication, between the Parties.

10.09 Entire Agreement. This Agreement constitutes the final, complete and exclusive agreement between the Parties with respect to its subject matter and supersedes all past and contemporaneous agreements, promises, and understandings, whether oral or written, between the Parties.

10.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties, their heirs, legal representatives, successors and assigns.

10.11 Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect as if the invalid or unenforceable provision had never been a part of the Agreement.

10.12 Amendments. This Agreement may not be amended or modified except by a writing signed by the Parties and identified as an amendment to this Agreement.

10.13 Construction. The Parties agree to all of the terms of this Agreement. The Parties execute this Agreement only after reviewing it thoroughly. That one Party or another may have drafted all or a part of this Agreement will not cause this Agreement to be read more strictly against the drafting Party. This Agreement, and any changes to it, will be interpreted on the basis that the Parties contributed equally to the drafting of all of its parts.

10.14 Nondisclosure. Except as permitted herein, neither Party will disclose any of the terms of this Agreement without the express, prior, written consent of the other Party, or unless required by law or a regulatory authority.

10.15 Counterparts. This Agreement shall become binding as of the Effective Date when any one or more counterparts hereof, individually or taken together, shall bear the signatures of each of the Parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, MAYO and NILE have caused this Agreement to be signed as of the Effective Date by their respective representatives.

MAYO FOUNDATION FOR MEDICAL EDUCATION AND RESEARCH:

/s/ Steven P. Vannurden — 1/18/06
DATE

NAME: STEVEN P. VANNURDEN
TITLE: ASSISTANT TREASURER

READ, UNDERSTOOD AND AGREED:

/s/ John C. Burnett — 1/18/06
DATE

JOHN C. BURNETT, M.D.

/s/ Ondrej Lisy — 1/18/06
DATE

ONDREJ LISY, M.D., PH.D.

NILE PHARMACEUTICALS, INC:

/s/ Joshua A. Kazam — 1/18/06
DATE

NAME: Joshua A. Kazam
TITLE: President

EXHIBIT A
PATENTS

US Patent granted June 2002, #6,407,211;

US Patent granted November 2004, #6,818,619;

US Application Serial Number 10/947,730;

European Application Number 00988092.3;

Canadian Application Number 2,395,585; and

Japanese Application Number 2001-544773.

Exhibit 10.7

EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") by and among DR. CESARE CASAGRANDE, having an address at Via Campogallo, 21/67, 20020 Arese, Milan, Italy and NILE THERAPEUTICS, INC., a corporation organized and existing under the laws of the State of Delaware, with principal offices located at 2850 Telegraph Avenue, Suite 310, Berkeley, CA 94705 ("LICENSEE") is effective as of the date of final execution below ("EFFECTIVE DATE").

ARTICLE 1 BACKGROUND

1.1. In the course of research conducted by the LICENSOR (as defined below), the LICENSOR has produced certain inventions referred to a medicinal product designated as 2-NTX-99 (the "INVENTION"), which is owned by the LICENSOR and described in the LICENSED PATENTS (as defined below).

1.2. The LICENSOR and LICENSEE wish to have the INVENTION and any LICENSED PATENTS (as defined below) developed and commercialized.

1.3. LICENSEE has represented to LICENSOR in order to induce LICENSOR to enter into this Agreement that it is experienced in developing and commercializing products similar to the LICENSED PRODUCTS (as defined below) and that it shall act diligently to develop and commercialize the LICENSED PRODUCTS for public use throughout the LICENSED TERRITORY (as defined below).

1.4. The LICENSOR is willing to grant a license to LICENSEE, subject to the terms and conditions of this Agreement.

1.5. In consideration of these statements and the mutual promises herein made and exchanged, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LICENSOR and LICENSEE agree to the terms of this Agreement.

ARTICLE 2 DEFINITIONS

The following terms used in this Agreement shall be defined as set forth below:

2.1. "AFFILIATE" shall mean any entity or person that directly or indirectly controls, is controlled by or is under common control with LICENSEE or a SUBLICENSEE as applicable. For purposes of this definition, "control" means possession of the power to direct the management of such entity or person, whether through ownership of more than fifty percent (50%) of voting securities, by contract or otherwise.

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[1] **Confidential treatment has been requested for certain portions of this Exhibit. The confidential portions of this Exhibit have been omitted and filed separately with the Securities and Exchange Commission. Such portions have been marked with "***" at the exact place where material has been omitted.**

2.2. “CHANGE OF CONTROL” shall mean a merger, consolidation, acquisition or the transfer of all, or substantially all, of the business interests of LICENSEE to which this Agreement relates to which LICENSEE is a party where the shareholders of LICENSEE immediately prior to effective date of such transaction beneficially own, immediately following the effective date of such transaction, securities representing less than fifty percent (50%) of the combined voting power of the surviving corporation’s then outstanding voting securities.

2.3. “COMMON STOCK” shall mean the shares of common stock of the LICNESEE, par value $0.001 per share.

2.4. “CONFIDENTIAL INFORMATION” shall mean all information disclosed by one party to the other during the negotiation of or under this Agreement in any manner, whether orally, visually or in tangible form, that relates to LICENSED PATENTS, LICENSED INFORMATION, IMPROVEMENT PROJECT or the Agreement itself, unless such information is subject to an exception described in Article 9.2. CONFIDENTIAL INFORMATION that is disclosed in tangible form shall be marked “Confidential” at the time of disclosure and CONFIDENTIAL INFORMATION that is disclosed orally or visually shall be identified as confidential at the time of disclosure and subsequently reduced to writing, marked confidential and delivered to the other party within thirty (30) days of such disclosure.

2.5. “EARNED ROYALTY” is defined in Article 7.1.

2.6. “EFFECTIVE DATE” is defined in the introductory paragraph of this Agreement.

2.7. “EMEA” shall mean the European Medicines Agency or successor entity.

2.8. “EUROPEAN UNION” shall mean the European organisation of member states first established by the Treaty of the European Union in 1992 (otherwise known as the Maastricht Treaty) as it may be constituted from time to time, which, as of the date of this Agreement, consists of Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

2.9. “FAIR MARKET VALUE” shall mean the last sale price of the COMMON STOCK on the trading day on which the value is being determined or, in case no such reported sales take place on such day, the average of the last reported bid and asked prices of the COMMON STOCK on such day, in either case on the principal national securities exchange on which the COMMON STOCK is admitted to trading or listed, or if not listed or admitted to trading on any such exchange, the representative closing sale price of the COMMON STOCK as reported by the National Association of Securities Dealers, Inc. Automated Quotations System ("NASDAQ"), or other similar organization if NASDAQ is no longer reporting such information, or, if the COMMON STOCK is not reported on NASDAQ, the per share sale price for the COMMON STOCK in the over-the-counter market as reported by the National Quotation Bureau or similar organization, or if not so available, the fair market value of the COMMON STOCK as determined by the price per share in the most recent private financing round wherein (a) the total shares in the financing represent no less than five percent (5%) of the COMMON STOCK following such financing, and (b) greater than fifty percent (50%) of the shares were purchased by parties unaffiliated with LICENSEE management or directors.

2.10. “FDA” shall mean the United States Food and Drug Administration or successor entity.

2.11. “FIELD” shall mean all therapeutic uses in humans and animals.

2.12. “FIRST SALE” shall mean the first commercial sale to a third party of any LICENSED PRODUCT in the LICENSED TERRITORY (as defined below).

2.13. “IMPROVEMENT PROJECT” shall mean any and all projects conceived by the LICENSOR intended to find and/or develop any novel intellectual property relating to the LICENSED PRODUCTS, including, without limitation, improved methods of manufacture and production techniques, new or additional analogs, therapeutic indications and developments intended to enhance the safety and efficacy, or broaden the intended use of the LICENSED PRODUCTS.

2.14. “IND” shall mean an investigational new drug application filed with the FDA prior to the commencement of human clinical trials in the United States.

2.15. “INVENTION” is defined in Article 1.1.

2.16. “LICENSE” refers to the license granted under Article 3.1.

2.17. “LICENSED INFORMATION” shall mean all technical information and data, whether or not patented, that is known , learned, invented, or developed by the LICENSOR as of the EFFECTIVE DATE, as demonstrated by the written records of the LICENSOR to the extent that:

(a) such technical skills, information and data are useful for the use or practice of the LICENSED PATENTS as permitted herein; and

(b) the LICENSOR possess the right to license the use of such information to LICENSEE for commercial purposes under the terms of this Agreement.

2.18. "LICENSED PATENTS" shall mean the United States or foreign patent application(s) and patents(s) listed in Appendix A owned or assigned to LICENSOR during the term of this Agreement, together with any continuations, divisionals, and continuations-in-part, to the extent the claims of any such patent or patent application are directed to subject matter specifically described in the patent applications listed on Appendix A; any reissues, re-examinations, or extensions thereof, or substitutes therefore; and the relevant international equivalents of any of the foregoing. Appendix A is incorporated into this Agreement. LICENSED PATENTS shall also include any results of the IMPROVEMENT PROJECTS added to the LICENSE pursuant to Article 3.2.

2.19. "LICENSED PRODUCTS" shall mean any product, apparatus, kit, or component part thereof;

(a) the manufacture, use or sale of which without a license from LICENSOR, would infringe a VALID CLAIM of a LICENSED PATENT;

(b) incorporates, uses, or is derived from the LICENSED PATENTS; or

(c) is developed by using a process or composition which is covered in whole or in part by a VALID CLAIM of a LICENSED PATENT.

2.20. "LICENSED TERRITORY" shall mean the entire world.

2.21. "MAJOR MARKET COUNTRY" shall mean Canada, the United Kingdom, France, Germany, Spain, Italy, or Japan.

2.22. "LICENSOR" shall mean Dr. Cesare Casagrande or any immediate family member of Dr. Casagrande, or any trust, all of the beneficiaries of which are such Dr. Casagrande or his immediate family members, or the guardian, conservator, heir or estate of Dr. Casagrande, or any corporation, partnership, limited liability company or other entity all or substantially all of the outstanding securities and other beneficial interests of which are owned by Dr. Casagrande or his immediate family members.

2.23. "NDA" shall mean a new drug application filed with the FDA to obtain marketing approval for a LICENSED PRODUCT in the United States.

2.24. "NET SALES" shall mean:

(a) the total gross receipts from the sale, leasing, renting of, or otherwise making LICENSED PRODUCTS available by the LICENSEE, SUBLICENSEES or AFFILIATES to THIRD PARTIES (defined below) for profit without sale or other dispositions, whether invoiced or not, less the following deductions, provided they actually pertain to the disposition of LICENSED PRODUCTS and are separately invoiced:

(i) all reasonable and customary discounts, returns, credits and allowances on account of returns, bad debt deductions actually written off during the calendar quarter in which sales occurred, provided, however, that deductions taken for bad debt shall not exceed in aggregate one percent (1.0%) of gross sales of LICENSED PRODUCT during the calendar quarter;

(ii) reasonable and customary arms length negotiated commissions actually paid to independent and unaffiliated third-party distributors and third party sales agencies not to exceed in aggregate one and one quarter percent (1.25%) per calendar quarter;

(iii) reasonable and customary outbound transportation and transportation insurance, packaging (for shipping purposes only) and freight charges; and

(iv) reasonable and customary duties, taxes (but not income taxes) and other governmental charges levied on the sale, transportation or delivery of LICENSED PRODUCTS, but not including income taxes of the LICENSEE.

(b) No deductions shall be made for any other costs or expenses, including but not limited to commissions to any person or entity on LICENSEE'S, SUBLICENSEE'S or an AFFILIATE'S payroll or for the cost of collection.

(c) Notwithstanding any provision in this Agreement to the contrary, NET SALES shall not include the gross invoice price for LICENSED PRODUCTS sold to, or services performed using LICENSED PRODUCTS for, any AFFILIATE unless such AFFILIATE is an end-user of any LICENSED PRODUCT, in which case that transaction shall be included in NET SALES at the average selling price charged to a THIRD-PARTY (as defined below) during the same quarter.

2.25. "PHASE I CLINICAL TRIAL" shall mean a human clinical trial, the principal purpose of which is to determine toxicity, absorption, metabolism and/or safe dosage range in patients with the disease target being studied as required in 21 C.F.R. §312(a).

2.26. "PHASE II CLINICAL TRIAL" shall mean a human clinical trial, the principal purpose of which is to evaluate the effectiveness of a drug for a particular indication in patients with the disease and to determine the common short-term side effects and risks associated with the drug as required in 21 C.F.R. §312(b).

2.27. "PHASE III CLINICAL TRIAL" shall mean expanded controlled and uncontrolled human clinical trials pursuant to a randomized study with endpoints agreed upon by regulatory bodies for regulatory approval performed after PHASE II CLINICAL TRIALS evidence suggesting effectiveness of a LICENSED PRODUCT has been obtained, and is intended to gather the additional information about effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of a LICENSED PRODUCT and to provide an adequate basis for physician labeling, as required in 21 C.F.R. §312.

2.28. "PMA" shall mean an application for marketing authorization of a LICENSED PRODUCT filed with the EMEA.

2.29. "REASONABLE COMMERCIAL EFFORTS" shall mean those efforts consistent with those used by comparable companies in the United States in research and development projects for therapeutic methods or compositions deemed to have commercial value comparable to the LICENSED PRODUCTS.

2.30. "SUBLICENSING ROYALTIES" shall mean royalty consideration received by LICENSEE as a result of NET SALES of LICENSED PRODUCTS by a SUBLICENSEE.

2.31. "SUBLICENSEE" shall mean any third party sublicensed by LICENSEE to make, have made, use, sell, have sold, import or export any LICENSED PRODUCT.

2.32. "TERM" is defined in Article 3.2.

2.33. "THIRD PARTY(IES)" shall mean any person or entity that is not party to this Agreement but does not include SUBLICENSEES or any AFFILIATE of LICENSEE or any SUBLICENSEE under the terms herein.

2.34. "VALID CLAIM" shall mean an issued claim of any unexpired patent included among the PATENT RIGHTS, which has not been held unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, which has not been rendered unenforceable through disclaimer or otherwise, and which has not been lost through an interference proceeding or abandoned.

ARTICLE 3 LICENSE GRANT AND TERM

3.1. Subject to all the terms and conditions of this Agreement, the LICENSOR hereby grants to LICENSEE an exclusive license to practice under the LICENSED PATENTS and use the LICENSED INFORMATION, with the right to grant sublicenses, to make, have made, use, sell, have sold, offer to sell, import or export LICENSED PRODUCTS within the FIELD in the LICENSED TERRITORY (the "LICENSE").

3.2. LICENSOR grants to LICENSEE a right of first refusal to financially support any IMPROVEMENT PROJECT and to include the results of any such IMPROVEMENT PROJECT under the terms of this Agreement as LICENSED PATENTS or LICENSED INFORMATION. LICENSOR shall disclose any proposed IMPROVEMENT PROJECT to LICENSEE in writing prior to disclosing to any THIRD PARTIES. Following such written disclosure to LICENSEE, LICENSEE shall have ninety (90) days to determine its interest in financially supporting such IMPROVEMENT PROJECT. In the event that LICENSEE desires to financially support the IMPROVEMENT PROJECT, LICENSEE shall inform LICENSOR in writing and the parties shall negotiate in good faith the terms and conditions of a sponsored research agreement upon commercially reasonable terms. In the event that LICENSEE determines not to financially support such IMPROVEMENT PROJECT, or if the parties are unable to agree upon commercial terms, then LICENSOR shall be free to negotiate with a THIRD PARTY relating to the funding of such IMPROVEMENT PROJECT, provided however, that the LICENSOR may not enter into an agreement with a THIRD PARTYon terms more favorable to such THIRD PARTY than those proposed by LICENSOR to LICENSEE. Nothing in this Agreement shall be construed as a license, sublicense or grant to such THIRD PARTY of rights to the LICENSED PATENTS or LICENSED INFORMATION, or as an exception to the rights granted pursuant to Section 3.1 of this Agreement.

3.3. Unless terminated earlier as provided in ARTICLE 15, the term of the LICENSE (the "TERM") shall commence on the EFFECTIVE DATE and shall automatically expire on the later of:

(a) the date on which the last VALID CLAIM described in the LICENSED PATENTS expires, lapses or is declared to be invalid by a non-appealable decision of a court of competent jurisdiction; or

(b) twenty (20) years after the EFFECTIVE DATE.

3.4. Nothing in this Agreement shall be construed to grant by implication, estoppel or otherwise any licenses under patents of the LICENSOR other than the LICENSED PATENTS. Except as expressly provided in this Agreement, under no circumstances will the LICENSEE, as a result of this Agreement, obtain any interest in or any other right to any technology, know-how, patents, patent applications, materials or other intellectual or proprietary property of the LICENSOR. Subject to Article 14.1, nothing in this Agreement shall be construed as preventing LICENSOR from using the LICENSED PATENTS and the LICENSED INFORMATION for academic research and non-commercial purposes.

3.5. The LICENSE granted in Article 3.1 shall automatically convert to a paid-up, non-exclusive license, on a country-by-country basis, upon the expiration of the TERM as described in Article 3.3.

3.6. Articles 2, 6.2(b), 9, 10.2, 13, 15, 16, 18, and 20 shall survive expiration of this Agreement pursuant to Article 3.2 or termination pursuant to ARTICLE 15.

ARTICLE 4 SUBLICENSES

4.1. The LICENSOR hereby grants to the LICENSEE the right to sublicense its right to make, have made, use, sell, have sold, import or export LICENSED PRODUCTS within the FIELD in the LICENSED TERRITORY following the dosing of the first subject in a PHASE I CLINICAL TRIAL of a LICENSED PRODUCT, provided this Agreement is in effect and the LICENSEE is not in breach of its obligations hereunder.

4.2. Any sublicense granted by LICENSEE shall comply with all the terms of this LICENSE and shall include substantially the same definitions and provisions set forth in the following Articles of this Agreement ARTICLES 2, 3, 8, 10.2, 13, 16 and 18. LICENSEE shall require any SUBLICENSEE to actively pursue the achievement of a proof of concept in humans in U.S. and/or in the EUROPEAN UNION. Any agreement between the LICENSEE and any SUBLICENSEE (a "SUBLICENSE AGREEMENT") shall expressly provide that the provisions of this Agreement shall be directly enforceable against such SUBLICENSEE by the LICENSOR. LICENSEE will promptly provide the LICENSOR with a copy of each SUBLICENSE AGREEMENT no later than 30 days after execution.

4.3. The LICENSEE agrees that it shall promptly:

(a) provide the LICENSOR with a copy of any amendments to any SUBLICENSE AGREEMENT entered into by the LICENSEE under this Agreement and to notify the LICENSOR of termination of any SUBLICENSE AGREEMENT; and

(b) deliver copies of all reports provided to the LICENSEE by SUBLICENSEES of a similar nature to those described in ARTICLE 10;

(c) exert its best efforts in order to cause the SUBLICENSEES to perform the obligations provided for in the SUBLICENSE AGREEMENTS.

ARTICLE 5 LICENSE FEE AND MILESTONE PAYMENTS

5.1. The LICENSEE shall pay to LICENSOR, on the EFFECTIVE DATE, a non refundable license fee equal to [***].

5.2. The LICENSEE shall also pay to LICENSOR on the EFFECTIVE DATE the amount of [***] for past patent expenses incurred by the LICENSOR prior to EFFECTIVE DATE as required under ARTICLE 11.

5.3. The LICENSEE shall pay the following one-time non-refundable milestone payments (the "MILESTONE PAYMETS") to LICENSOR, whether accomplished by the LICENSEE, a SUBLICENSEE or any of their respective AFFILIATES:

(a) [***] upon the dosing of the first subject in the first PHASE I CLINICAL TRIAL of a LICENSED PRODUCT in the United States conducted by the LICENSEE pursuant to a corporate sponsored IND;

(b) [***] upon the dosing of the first subject in the first PHASE I CLINICAL TRIAL (or its foreign equivalent) of a LICENSED PRODUCT conducted by the LICENSEE in the EUROPEAN UNION;

(c) [***] upon the dosing of the first patient in the first PHASE II CLINICAL TRIAL of a LICENSED PRODUCT conducted by the LICENSEE in the United States;

(d) [***] upon the dosing of the first subject in the first PHASE II CLINICAL TRIAL (or its foreign equivalent) of a LICENSED PRODUCT conducted by the LICENSEE in the EUROPEAN UNION;

(e) [***] upon the dosing of the first patient in the first PHASE III CLINICAL TRIAL of a LICENSED PRODUCT conducted by the LICENSEE in the United States;

(f) [***] upon the dosing of the first subject in the first PHASE III CLINICAL TRIAL (or its foreign equivalent) of a LICENSED PRODUCT conducted by the LICENSEE in the EUROPEAN UNION;

(g) [***] upon the approval by the FDA of the first NDA for a LICENSED PRODUCT;

(h) [***] upon approval by the FDA of an NDA for a second human therapeutic indication of the LICENSED PRODUCT described in 5.3(g);

(i) [***] upon the approval by the EMEA of the first PMA submitted by the LICENSEE resulting in the granting of a marketing authorization for a LICENSED PRODUCT;

(j) [***] upon the approval by the EMEA of the first PMA submitted by the LICENSEE resulting in the granting of a marketing authorization for a LICENSED PRODUCT for a second human therapeutic indication than the one described in 5.3(i);

(k) [***] upon receipt by the LICENSEE of marketing approval in Japan for the first LICENSED PRODUCT;

(l) [***] following the first calendar year in which annual NET SALES of LICENSED PRODUCTS equal Two Hundred Fifty Million Dollars ($250,000,000.00);

(m) [***] following the first calendar year in which annual NET SALES of LICENSED PRODUCTS equal Five Hundred Million Dollars ($500,000,000.00); and

(n) [***] following the first calendar year in which annual NET SALES of LICENSED PRODUCTS equal One Billion Dollars ($1,000,000,000.00).

5.4. No MILESTONE PAYMENT shall be paid more than once for any LICENSED PRODUCT. In the event that the LICENSEE is permitted to advance the clinical development by the FDA or EMEA without conducting one or more activities described in Article 5.3 above, then the LICENSEE shall pay to the LICENSOR all milestone payments owed pursuant to Article 5.3 that would otherwise have been paid to the LICENSOR had the LICENSEE been required to conduct such activity. By way of example, if the EMEA permits the LICENSEE to commence PHASE III CLINICAL TRIALS in the EUROPEAN UNION without first conducting a PHASE II CLINICAL TRIAL in the EUROPEAN UNION, then the LICENSEE will immediately pay to the LICENSOR the amount owed pursuant to Article 5.3(d).

5.5. The LICENSEE shall promptly notify the LICENSOR as soon as each of the milestones described in Article 5.3 has been achieved, whether it is achieved by the LICENSEE, a SUBLICENSEE or any of their respective AFFILIATES.

5.6. Article 7.4 shall apply to MILESTONES PAYMENTS.

ARTICLE 6 EQUITY

6.1. Upon the EFFECTIVE DATE, LICENSEE shall issue to LICENSOR a number of shares of COMMON STOCK having a FAIR MARKET VALUE as of the EFFECTIVE DATE equal to One Million Dollars ($1,000,000.00). LICENSEE shall deliver, or caused to be delivered, to LICENSOR a stock certificate, duly signed by appropriate officers of LICENSEE and issued in LICENSOR'S name, representing all of the shares of COMMON STOCK required to be issued to LICENSOR under this Article 6.1.

6.2. By accepting the shares of COMMON STOCK, the LICENSOR hereby:

(a) consents to the placement of a legend on any certificate or other document evidencing the shares of COMMON STOCK that such shares of COMMON STOCK have not been registered under the Securities Act of 1933 or any state securities or "blue sky" laws and setting forth or referring to the restrictions on transferability and sale thereof contained in this Agreement. The LICENSOR is aware that the LICENSEE will make a notation in its appropriate records with respect to the restrictions on the transferability of such shares of COMMON STOCK. The legend to be placed on each certificate shall be in form substantially similar to the following:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR ANY STATE SECURITIES OR "BLUE SKY LAWS", AND MAY NOT BE OFFERED, SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED ABSENT AN EFFECTIVE REGISTRATION THEREOF UNDER SUCH ACT OR COMPLIANCE WITH RULE 144 PROMULGATED UNDER SUCH ACT, OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT SUCH REGISTRATION IS NOT REQUIRED."

(b) agrees it will not, without the prior written consent of the LICESEE, offer, pledge, sell, contract to sell, grant any option for the sale of, or otherwise dispose of, directly or indirectly, the shares of COMMON STOCK for a period of 180 days following the initial public offering of the COMMON STOCK of the LICENSEE. In order to enforce the foregoing covenant, the LICENSEE may impose stop-transfer instructions with re-spect to the shares of COMMON STOCK until the end of such period.

ARTICLE 7 EARNED ROYALTIES

7.1. Subject to provisions of this ARTICLE 7, during the TERM of this Agreement, as partial consideration for the LICENSE, LICENSEE shall pay to LICENSOR an earned royalty on worldwide cumulative NET SALES of LICENSED PRODUCTS by LICENSEE or its AFFILIATES ("EARNED ROYALTIES") determined as a percentage of NET SALES by LICENSEE or its AFFILIATES as set forth below:

ANNUAL NET SALES	ROYALTY
$0 to $250,000,000	[***]
$250,000,001 to $500,000,000	[***]
$500,000,001 and above	[***]

7.2. In the event that the LICENSEE enters into a SUBLICENCE AGREEMENT during the TERM of this Agreement, LICENSEE shall pay to LICENSOR the greater of:

(a) [***] of the SUBLICENSING ROYALTIES received by the LICENSEE from a SUBLICENSEE; and

(b) [***] of the NET SALES by such SUBLICENSEE.

7.3. LICENSEE shall pay all EARNED ROYALTIES accruing to the LICENSOR within thirty (30) days from the end of each calendar quarter (March 31, June 30, September 30 and December 31), beginning in the first calendar quarter in which NET SALES occur.

7.4. All EARNED ROYALTIES and other payments due under this Agreement shall be paid directly to LICENSOR in United States Dollars. In the event that conversion from foreign currency is required in calculating a payment under this Agreement, the exchange rate used shall be the Interbank rate quoted by Citibank at the end of the last business day of the quarter in which the royalty was earned. If overdue, the royalties and any other payments due under this Agreement shall bear interest until payment at a per annum rate two percent (2%) above the prime rate in effect at Citibank on the due date and the LICENSOR shall be entitled to recover reasonable attorneys' fees and costs related to the administration or enforcement of this Agreement, including collection of royalties or other payments, following such failure to pay. The payment of such interest shall not foreclose the LICENSOR from exercising any other right it may have as a consequence of the failure of LICENSEE to make any payment when due.

7.5. In the event that LICENSEE'S outside patent counsel together with LICENSOR'S outside patent counsel agree (which discussion and agreement shall be in good faith) that patent licenses from third parties are reasonably required by LICENSEE, its AFFILIATES or its SUBLICENSEE to make, use, offer for sale, sell or import any LICENSED PRODUCT in any given country, LICENSOR and LICENSEE shall negotiate in good faith with the intention of reaching a fair and equitable formula on how any amount paid by LICENSEE to such third parties shall be shared by LICENSEE and LICENSOR, except that EARNED ROYALTY payable to LICENSOR on NET SALES of such LICENSED PRODUCTS shall not be reduced by more than fifty percent (50%).

7.6. No multiple royalties shall be payable because the use, lease or sale of any LICENSED PRODUCT is, or shall be, covered by more than one VALID CLAIM contained in the LICENSED PATENTS.

7.7. In the event that a LICENSED PRODUCT is sold in the form of a combination package together with companion products that are not themselves a LICESED PRODUCT, the NET SALES for such combination package upon which the Earned Royalty due to LICENSOR is based shall be calculated by multiplying the total sales price of such combination package by the fraction A/(A+B), where A is the invoice price of the LICENSED PRODUCT if sold separately, and B is the total invoice price of each of the other companion products included in the combination package if sold separately.

ARTICLE 8 DUE DILIGENCE

8.1. LICENSEE, its SUBLICENSEES, or its AFFILIATES shall use all REASONABLE COMMERCIAL EFFORTS to conduct a research program designed to result in the regulatory approval and commercialization of the LICENSED PRODUCTS. LICENSEE shall demonstrate such efforts by performing any of the following activities:

(a) File an IND within [***] of the EFFECTIVE DATE of this Agreement;

(b) Upon IND filing, LICENSEE, its' SUBLICENSEES, or their AFFILIATES, shall demonstrate ongoing engagement of clinical development for LICENSED PRODUCTS, which shall be evidenced by conducting at least one of the following activities in any given year starting from the date of IND filing:

(i) having expended at least [***] for development of LICENSED PRODUCT;

(ii) having manufactured LICENSED PRODUCT suitable for clinical trials under an approved IND;

(iii) having actively engaged in study preparation, implementation or reporting of a PHASE I, PHASE II (proof-of-concept), or PHASE III CLINICAL TRIAL with respect to a LICENSED PRODUCT or the construction of regulatory documents for filing;

(iv) having responded to regulatory requests/issues relating to a PHASE I, PHASE II, or PHASE III CLINICAL TRIAL of a LICENSED PRODUCT;

(v) having prepared documents for NDA filing with respect to a LICENSED PRODUCT;

(vi) having filed an NDA for a LICENSED PRODUCT;

(vii) following NDA filing, having actively pursued NDA approval for a LICENSED PRODUCT; or

(viii) following NDA approval of a LICENSED PRODUCT, having launched or sold a LICENSED PRODUCT in the United States or another MAJOR MARKET COUNTRY.

8.2. Failure to comply with development activities described in Article 8.1 above within the prescribed time frame shall be considered a material breach of the LICENSE under 15.1(a), unless such failure is through no fault of the LICENSEE, including without limitation, a change in regulatory guidelines, generally accepted opinions or standards; the introduction of a new standard of care during the development of LICENSED PRODUCTS which affects the development strategy for LICENSED PRODUCTS; or unexpected findings (safety or efficacy) in clinical studies, pre-clinical studies or chemistry, manufacturing and control that delays clinical development or that requires that phase to be repeated. In such an instance, the parties shall amend the timelines accordingly.

8.3. Within 30 days of the end of the calendar quarters ending 30 June and 31 December, LICENSEE shall provide the LICENSOR with a report on the status of the development and marketing of each LICENSED PRODUCT of LICENSEE, SUBLICENSEES and their respective AFFILIATES and shall promptly provide the LICENSOR with such additional details of such development and marketing as the LICENSOR may from time to time reasonably request.

8.4. The parties shall establish an advisory board or other similar body consisting of Dr. Casagrande and other persons designated by LICENSEE ("PROJECT TEAM"). The PROJECT TEAM shall meet in person or by telephone or other mutually agreed upon method to provide guidance to the LICENSEE in the pre-clinical and clinical development of the LICENSED PRODUCTS. The LICENSEE shall reimburse Dr. Casagrande for the normal travel and other expenses incurred for the participation in person to the PROJECT TEAM meetings.

ARTICLE 9 CONFIDENTIALITY AND PUBLICITY

9.1. Subject to the parties' rights and obligations pursuant to this Agreement, the LICENSOR and LICENSEE agree that during the term of this Agreement and for five (5) years thereafter, each of them:

(a) will keep confidential and will cause their AFFILIATES and, in the case of LICENSEE, its SUBLICENSEES, to keep confidential, CONFIDENTIAL INFORMATION disclosed to it by the other party, by taking whatever action the party receiving the CONFIDENTIAL INFORMATION would take to preserve the confidentiality of its own CONFIDENTIAL INFORMATION, which in no event shall be less than reasonable care; and

(b) will only disclose that part of the other's CONFIDENTIAL INFORMATION to its officers, employees, agents, or independent contractors that is necessary for those officers, employees, agents, or independent contractors who need to know to carry out its responsibilities under this Agreement; and

(c) will not use the other party's CONFIDENTIAL INFORMATION other than as expressly set forth in this Agreement or disclose the other's CONFIDENTIAL INFORMATION to any third parties under any circumstance without advance written permission from the other party; and

(d) will, within sixty (60) days of termination or expiration of this Agreement, return all the CONFIDENTIAL INFORMATION disclosed to it by the other party pursuant to this Agreement except for one copy which may be retained by the recipient for monitoring compliance with this ARTICLE 9.

9.2. The obligations of confidentiality described above shall not pertain to that part of the CONFIDENTIAL INFORMATION that:

(a) was known to the recipient prior to the disclosure by the disclosing party; or

(b) is at the time of disclosure or has become thereafter publicly known through no fault or omission attributable to the recipient; or

(c) is rightfully given to the recipient from sources independent of the disclosing party; or

(d) is independently developed by the receiving party without use of or reference to the CONFIDENTIAL INFORMATION of the other party; or

(e) is required to be disclosed by law in the opinion of recipient's attorney, but only after the disclosing party is given prompt written notice and an opportunity to seek a protective order.

9.3. Except as required by law, neither party may disclose the financial terms of this Agreement without the prior written consent of the other party.

9.4. The terms of this Agreement shall be deemed confidential to the extent permitted by law, rule or regulation.

ARTICLE 10 REPORTS, RECORDS AND INSPECTIONS

10.1. Following FIRST SALE, LICENSEE shall, within sixty (60) days after the calendar year in which NET SALES first occurs, and within sixty (60) days after each calendar quarter (March 31, June 30, September 30 and December 31) thereafter, provide the LICENSOR with a written report detailing the NET SALES, if any, made by LICENSEE, its SUBLICENSEES and AFFILIATES of LICENSED PRODUCTS during the preceding calendar quarter and calculating the payments due pursuant to ARTICLE 7. NET SALES of LICENSED PRODUCTS shall be deemed to have occurred on the date of invoice for such LICENSED PRODUCTS. Each such report shall be signed by an officer of LICENSEE (or the officer's designee), and must include:

(a) the number of LICENSED PRODUCTS manufactured, sold, leased or otherwise transferred or disposed of by LICENSEE, SUBLICENSEES and AFFILIATES;

(b) a calculation of NET SALES for the applicable reporting period in each country, including the gross invoice prices charged for the LICENSED PRODUCTS and any permitted deductions made pursuant to Article 2.24;

(c) a calculation of total royalties or other payment due, including any exchange rates used for conversion;

(d) names and addresses of all SUBLICENSEES and the type and amount of any SUBLICENSE INCOME received from each SUBLICENSEE.

10.2. LICENSEE and its SUBLICENSEES shall keep, maintain complete and accurate records and books containing an accurate accounting of all data in sufficient detail to enable verification of EARNED ROYALTIES and other payments under this Agreement. LICENSEE shall preserve such books and records for three (3) years after the calendar year to which they pertain, or, in case of any dispute, until such dispute is finally decided or settled. Such books and records shall be open to inspection by the LICENSOR or an independent certified public accountant selected by the LICENSOR, at the LICENSOR’s expense, during normal business hours upon ten (10) days' prior written notice, for the purpose of verifying the accuracy of the reports and computations rendered by LICENSEE. In the event LICENSEE underpaid the amounts due to the LICENSOR with respect to the audited period by more than [***]), LICENSEE shall pay the reasonable cost of such examination, together with the deficiency not previously paid, and accrued interest on the underpayment at the lesser of the maximum rate allowed by law or [***] per month, all within thirty (30) days of receiving notice thereof from the LICENSOR. If the LICENSEE underpays by more than [***] in any calendar quarter, then the LICENSEE shall from that date forward deliver at LICENSEE’S cost and expense an annual audit within 90 days after the end of each annual period.

10.3. On or before the 90th day following the close of LICENSEE'S fiscal year, LICENSEE shall provide the LICENSOR with LICENSEE'S certified financial statements for the preceding fiscal year including, at a minimum, a balance sheet and an income statement, including notes relating to the License Agreement. LICENSEE shall also require that any SUBLICENSEE provide the LICENSEE and the LICENSOR with annual audited financial statements for within ninety (90) days following the date of the closing of the SUBLICENSEE's preceding fiscal year.

ARTICLE 11 PATENT PROSECUTION

11.1. LICENSEE shall be responsible for all past, present and future costs of filing, prosecution and maintenance of any and all United States and foreign patent applications contained in the LICENSED PATENTS. Any and all such United States and foreign patent applications, and resulting issued patents, shall remain the property of the LICENSOR.

11.2. The costs described in Article 11.1 shall include, but are not limited to, any past, present and future taxes, government fees, patent attorney fees, annuities, working fees, maintenance fees, renewal and extension charges. Payment of such costs shall be made, at the LICENSOR'S option, either directly to patent counsel or by reimbursement to the LICENSOR.

11.3. The activities provided for in Article 11.1 shall be performed and all new and existing patent applications under the LICENSED PATENTS shall be prepared, prosecuted, filed and maintained by patent counsel selected by LICENSEE and which is reasonably acceptable to the LICENSOR. LICENSEE shall be responsible for directing prosecution. With respect to any LICENSED PATENTS, LICENSEE and patent counsel shall:

(a) consult with the LICENSOR and keep the LICENSOR fully and timely informed of the performance of the activities provided for in Article 11.1 and the progress of all patent applications and patents, including all issues relating to the preparation, filing, prosecution and maintenance of LICENSED PATENTS;

(b) consult with the LICENSOR and keep the LICENSOR fully informed about LICENSEE's patent strategy with respect to the LICENSED PATENTS;

(c) provide to the LICENSOR advance copies of documents relevant to preparation, filing, prosecution and maintenance of the LICENSED PATENTS sufficiently in advance of filing to allow the LICENSOR a reasonable opportunity to review and comment on such documents; and

(d) provide the LICENSOR with final copies of such documents. LICENSEE agrees to use commercially reasonable efforts to obtain broad and strong patent protection in the best interest of the LICENSOR and LICENSEE. LICENSEE will not finally abandon any patent application, or make decisions that would have a material impact on the nature or scope of any claims without the LICENSOR' consent.

11.4. LICENSEE shall apply, and shall require SUBLICENSEES to apply, the patent marking notices required by the law of any country where such LICENSED PRODUCTS are made, sold, used or shipped, including, but not limited to, the applicable patent laws of that country.

ARTICLE 12 INFRINGEMENT AND LITIGATION

12.1. Each party shall promptly notify the other in writing in the event that it obtains knowledge of infringing activity by third parties, or is sued or threatened with an infringement suit, in any country in the LICENSED TERRITORY as a result of activities that concern the LICENSED PATENTS and shall supply the other party with documentation of the infringing activities that it possesses.

12.2. During the TERM of this Agreement:

(a) LICENSEE shall have the first right and obligation to defend the LICENSED PATENTS against infringement or interference in the FIELD and in the LICENSED TERRITORY by third parties. This right and obligation includes bringing any legal action for infringement and defending any counter claim of invalidity or action of a third party for declaratory judgment for non-infringement or non-interference. If, in the reasonable opinion of LICENSEE'S and the LICENSOR' respective counsel, the LICENSOR are required to be a named party to any such suit for standing purposes, LICENSEE may join the LICENSOR as a party; provided, however, that (i) the LICENSOR shall not be the first named party in any such action, (ii) the pleadings and any public statements about the action shall state that the action is being pursued by LICENSEE and that LICENSEE has joined the LICENSOR as a party; and (iii) LICENSEE shall keep the LICENSOR reasonably apprised of all developments in any such action. LICENSEE may settle such suits solely in its own name and solely at its own expense and through counsel of its own selection; provided, however, that no settlement shall be entered without the LICENSOR' prior written consent. LICENSEE shall bear the expense of such legal actions. Except for providing reasonable assistance, at the request and expense of LICENSEE, the LICENSOR shall have no obligation regarding the legal actions described in Article 12.2 unless required to participate by law. However, the LICENSOR shall have the right to participate in any such action through its own counsel and at its own expense. Any recovery shall first be applied to LICENSEE'S out of pocket expenses and second shall be applied to the LICENSOR'S out of pocket expenses, including legal fees. Any excess recovery over LICENSEE'S out of pocket expenses and LICENSOR' out of pocket expenses, if any, shall be deemed NET SALES and shared in accordance with Article 7.1.

(b) In the event LICENSEE fails to initiate and pursue or participate in the actions described in Article 12.2(a) within sixty (60) days of (a) notification of infringement from the LICENSOR or (b) the date LICENSEE otherwise first becomes aware of an infringement, whichever is earlier, the LICENSOR shall have the right to initiate such legal action at its own expense and the LICENSOR may use the name of LICENSEE as party plaintiff to uphold the LICENSED PATENTS. In such case, LICENSEE shall provide reasonable assistance to the LICENSOR if requested to do so. The LICENSOR may settle such actions solely through its own counsel. Any recovery shall be the sole property of LICENSOR.

12.3. In the event LICENSEE is permanently enjoined from exercising its LICENSE under this Agreement pursuant to an infringement action brought by a third party, or if both LICENSEE and the LICENSOR elect not to undertake the defense or settlement of a suit alleging infringement for a period of six (6) months from notice of such suit, then either party shall have the right to terminate this Agreement in the country where the suit was filed with respect to the licensed patent following thirty (30) days' written notice to the other party in accordance with the terms of ARTICLE 17.

ARTICLE 13 USE OF LICENSOR'S NAME

Each party shall obtain the prior written approval of the other prior to making use of the name of the other party nor any variation or adaptation thereof for any commercial purpose, except as required to comply with law, regulation or court order.

ARTICLE 14 PUBLICATION

14.1. In the event that LICENSOR desires to publish or disclose, by written, oral or other presentation, any material information related to the INVENTION, the LICENSED PATENTS, a NEW INVENTION or any LICENSED PRODUCT, or results relating to the clinical or non-clinical testing of any of the foregoing, LICENSOR shall notify LICENSEE and LICENSOR in writing pursuant to ARTICLE 17 of their intention no less than 60 days prior to any speech, lecture or other oral presentation, or any written or other publication or disclosure.

14.2. The LICENSOR shall include with any such notice pursuant to Article 14.1 a description of any proposed oral presentation or, in any proposed written or other disclosure, a current draft of such proposed disclosure or abstract.

14.3. LICENSEE may request that the LICENSOR, no later than 30 days following the receipt of such notice, delay such publication or disclosure in order to enable LICENSEE to file, or have filed on its behalf, a patent application, copyright or other appropriate form of intellectual property protection related to the information to be disclosed. Upon receipt of such notice, LICENSOR shall arrange for a delay in publication or disclosure until such time as LICENSEE has filed on LICENSOR's name and behalf such patent application, copyright or other appropriate form of intellectual property protection that LICENSEE agrees to file as soon as is reasonably practicable provided, however that said deferral shall not exceed 90 days from the receipt of such notice.

14.4. If the LICENSOR does not receive any request to delay publication or disclosure pursuant to Article 14.3, LICENSOR may submit such material for publication or presentation or make such other publication or disclosure.

ARTICLE 15 TERMINATION

15.1. LICENSOR shall have the right to terminate this Agreement pursuant to the provisions below, provided that LICENSOR has given LICENSEE the notice required in accordance Article 15.2 and LICENSEE has failed to cure the breach described in such notice:

(a) breach by LICENSEE of a material term of the Agreement;

(b) the institution of any proceeding by LICENSEE under any bankruptcy, insolvency, or moratorium law;

(c) any assignment by LICENSEE of substantially all of its assets for the benefit of creditors;

(d) placement of LICENSEE'S assets in the hands of a trustee or a receiver unless the receivership or trust is dissolved within 30 days thereafter and provided that in the case of an involuntary bankruptcy proceeding, which is contested by LICENSEE, such termination shall not become effective until the bankruptcy court of jurisdiction has entered an order upholding the petition; or

(e) a decision by LICENSEE or LICENSEE'S licensee or assignee of rights under this Agreement to quit the business of developing or selling Licensed Products.

15.2. LICENSOR may exercise its rights pursuant to Article 15.1 above by giving LICENSEE ninety (90) days' prior written notice (the "Written Notice") of LICENSOR'S intention to terminate. Such notice shall include the basis for such termination. Upon the expiration of such period, LICENSOR shall provide written notice of termination to LICENSEE (the "Termination Notice"), effective upon receipt, unless LICENSEE has cured the material breach or the other basis for such proposed termination during such ninety (90) day period. Such notice and termination shall not prejudice LICENSOR'S right to receive Earned Royalties accrued prior to termination, or other sums due hereunder and shall not prejudice any cause of action or claim of LICENSOR accrued or to accrue on account of any breach or default by LICENSEE.

15.3. LICENSEE shall have the right to terminate this Agreement pursuant to the provisions below, provided that LICENSEE has given LICENSOR the notice required in accordance with Article 15.4:

(a) LICENSEE may terminate this Agreement upon breach by LICENSOR of a material term of the Agreement; or

(b) LICENSEE may terminate this Agreement in its reasonable commercial business judgment by providing written notice of such termination given to LICENSOR at least ninety (90) days prior to the date of such termination. Such notice of termination shall include an explanation for termination, which may include, but is not limited to, pre-clinical or clinical safety or efficacy results, formulation or manufacturing issues, a change in legal or regulatory rules or scientific opinion, changes in the competitive environment, pipeline prioritization or other reorganization or redirection of LICENSEE's business.

15.4. LICENSEE may exercise its right of termination pursuant to Article 15.3(a), by giving LICENSOR ninety (90) days' prior written notice of LICENSEE'S intention to terminate and by providing in its termination notice the basis for such termination. Upon the expiration of the ninety (90) day period, LICENSEE shall provide written notice of termination to LICENSOR, effective upon receipt, unless LICENSOR has cured the breach or the other basis for such proposed termination during such ninety (90) day period. Such notice of termination shall not prejudice any cause of action or claim of LICENSEE accrued or to accrue on account of any breach or default by LICENSOR.

15.5. If this Agreement is terminated pursuant to the provisions of Article 15.1, then all of LICENSEE's rights under LICENSED PATENTS shall terminate and LICENSEE shall return to LICENSOR, or at LICENSOR'S direction, destroy all data, writings and other documents and tangible materials supplied to LICENSEE by LICENSOR hereunder. Any SUBLICENSES will remain in full force and effect and will be assigned to the LICENSOR.

15.6. If this Agreement is terminated pursuant to Section 15.2 or 15.3(b):

(a) LICENSEE shall further, upon LICENSOR's request and with no need for additional consideration, grant to LICENSOR an exclusive, worldwide, fully paid, perpetual license, with full rights to sublicense, under all of LICENSEE's rights in any LICENSED PATENTS and LICENSED INFORMATION. Further, at LICENSOR's request, LICENSEE agrees to negotiate in good faith for an agreement (the "Data License"), which shall be on commercially reasonable terms, under which LICENSEE would provide to LICENSOR the rights to use full and complete copies of all toxicity, efficacy, and other data generated or owned by LICENSEE or LICENSEE's Affiliates, (including by contractors or agents on their behalf) in the course of LICENSEE's efforts to develop LICENSED PRODUCTS or obtain governmental approval for the SALE of LICENSED PRODUCTS, for use in connection with the development and commercialization of LICENSED PRODUCTS with right to provide such data pertaining to the LICENSED PATENTS and LICENSED INFORMATION to any THIRD PARTY with a bona fide interest in licensing such technology. Under the terms of such a Data Agreement, in the event a THIRD PARTY concludes a license with LICENSOR, such THIRD PARTY would be free to use such data for all purposes, including to obtain government approvals to sell products.

(b) In furtherance of Section 15.6(a), the LICENSEE agrees that, within 60 days of written request by the LICENSOR, LICENSEE shall make available for review by LICENSOR, or any THIRD PARTY identified by the LICENSOR with a bona fide interest in licensing the LICENSED PATENTS, copies of such data and information pertaining to LICENSED PATENTS and LICENSED INFORMATION in a mutually convenient location. Any such data would be provided on a confidential basis pursuant to a mutually agreeable confidentiality agreement.

(c) LICENSOR or such THIRD PARTY shall bear the costs incurred by LICENSEE in connection with providing information pursuant to this Section.

(d) Any Sublicense entered into by the LICENSEE shall contain provisions substantially similar to the ones contained herein with respect to data and information generated by the SUBLICENSEE.

15.7. The failure of either Party, at any time, or for any period of time, to enforce any of the provisions of this Agreement, shall not be construed as a waiver of such provisions or as a waiver of the right of either Party's thereafter to enforce each and every such provision of this Agreement.

15.8. The rights provided in this ARTICLE 15 shall be in addition and without prejudice to any other rights which the parties may have with respect to any default or breach of the provisions of this Agreement.

ARTICLE 16 INDEMNIFICATION; INSURANCE; NO WARRANTIES

16.1. LICENSEE shall defend, indemnify and hold harmless the LICENSOR, its trustees, directors, officers, employees, and agents and their respective successors, heirs and assigns against any and all liabilities, claims, demands, damages, judgments, losses and expenses of any nature, including without limitation legal expenses and attorneys' fees (a "CLAIM"), arising out of any theory of liability (including without limitation tort, warranty, or strict liability) or the death, personal injury, or illness of any person or out of damage to any property related in any way to the rights granted under this Agreement; or resulting from the production, manufacture, sale, use, lease, or other disposition or consumption or advertisement of the LICENSED PRODUCTS by LICENSEE, its AFFILIATES, SUBLICENSEES or any other transferees; or in connection with any statement, representation or warranty of LICENSEE, its AFFILIATES, SUBLICENSEES or any other transferees with respect to the LICENSED PRODUCTS; provided, however, that the LICENSEE shall not be responsible to indemnify the LICENSOR pursuant to this Article 16.1 to the extent any CLAIM arises out of the LICENSOR'S gross negligence or willful misconduct and LICENSEE shall not be responsible to indemnify LICENSOR pursuant to this Article 16.1 to the extent any CLAIM arises out of LICENSOR'S gross negligence or willful misconduct.

16.2. LICENSEE shall purchase and maintain in effect and shall require its SUBLICENSEES to purchase and maintain in effect a policy of commercial, general liability insurance to protect the LICENSOR with respect to events described in Article 16.1. Such insurance shall:

(a) list LICENSOR as an additional insured under the policy;

(b) provide that such policy is primary and not excess or contributory with regard to other insurance the LICENSOR may have;

(c) be endorsed to include product liability coverage in amounts no less than [***] per incident and [***] annual aggregate; and

(d) be endorsed to include contractual liability coverage for LICENSEE'S indemnification under Article 16.1; and

(e) by virtue of the minimum amount of insurance coverage required under Article 16.2(c) , not be construed to create a limit of LICENSEE'S liability with respect to its indemnification under Article 16.1.

16.3. By signing this Agreement, LICENSEE certifies that the requirements of Article 16.2 will be met on or before the earlier of (a) the date of FIRST SALE of any LICENSED PRODUCT or (b) the date any LICENSED PRODUCT is tested or used on humans, and will continue to be met thereafter. Upon the LICENSOR' request, LICENSEE shall furnish a Certificate of Insurance and a copy of the current Insurance Policy to the LICENSOR. LICENSEE shall give thirty (30) days' written notice to the LICENSOR prior to any cancellation of or material change to the policy.

16.4. THE LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES THAT ANY CLAIMS OF THE LICENSED PATENTS, ISSUED OR PENDING, ARE VALID, OR THAT THE MANUFACTURE, USE, SALE OR OTHER DISPOSAL OF THE LICENSED PRODUCTS OR USE OF THE LICENSED INFORMATION DOES NOT OR WILL NOT INFRINGE ANY PATENT OR OTHER RIGHTS NOT VESTED IN THE LICENSOR.

16.5. THE LICENSOR DISCLAIMS ALL WARRANTIES WHATSOEVER WITH RESPECT TO THE LICENSED PATENTS, LICENSED INFORMATION, LICENSED PRODUCTS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE SHALL MAKE NO STATEMENTS, REPRESENTATION OR WARRANTIES WHATSOEVER TO ANY THIRD PARTIES WHICH ARE INCONSISTENT WITH SUCH DISCLAIMER BY THE LICENSOR. IN NO EVENT SHALL THE LICENSOR, OR ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER THE LICENSOR SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY OF THE FOREGOING.

16.6. IN NO EVENT SHALL THE LICENSOR, OR ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES, BE LIABLE FOR DAMAGES IN EXCESS OF AMOUNTS THE LICENSOR HAVE RECEIVED FROM LICENSEE UNDER THIS LICENSE.

ARTICLE 17 NOTICES, PAYMENTS

17.1. Any payment, notice or other communication required by this Agreement (a) shall be in writing, (b) may be delivered personally or sent by reputable overnight courier with written verification of receipt or by registered or certified first class United States Mail, postage prepaid, return receipt requested, (c) shall be sent to the following addresses or to such other address as such party shall designate by written notice to the other party, and (d) shall be effective upon receipt:

FOR LICENSOR:

Dr. Cesare Casagrande
Via Campogallo, 21/67
20020 Arese, Milan
Italy
Tel:
Fax:
E-mail:

FOR LICENSEE:

Chief Executive Officer
Nile Therapeutics, Inc.
2850 Telegraph Avenue, Suite 310
Berkeley, CA 94705
Tel: (510) 281-7701
Fax: (510) 288-1310
E-mail: info@nilethera.com

ARTICLE 18 LAWS, FORUM AND REGULATIONS

18.1. Any dispute arising out of or in connection with this Agreement, including any question regarding their existence, validity or termination, shall be finally solved under the Rules of Arbitration of the International Chamber of Commerce, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitration shall be English. The arbitrators shall decide ex bono et aequo.

18.2. LICENSEE shall comply, and shall cause its AFFILIATES and SUBLICENSEES to comply, with all foreign and United States federal, state, and local laws, regulations, rules and orders applicable to the testing, production, transportation, packaging, labeling, export, sale and use of the LICENSED PRODUCTS. In particular, LICENSEE shall be responsible for assuring compliance with all United States export laws and regulations applicable to this LICENSE and LICENSEE'S activities under this Agreement.

ARTICLE 19 REPRESENTATIONS AND WARRANTIES

19.1. LICENSEE represents and warrants to LICENSOR that:

(a) LICENSEE is a duly organized and validly existing corporation under the laws of the State of Delaware with adequate power and authority to conduct the business in which it is now engaged or currently proposed to be engaged, and LICENSEE is duly qualified to do business as a foreign corporation and is in good standing in such other states or jurisdictions as is necessary to enable it to carry on its business or own its properties.

(b) To the best of LICENSEE'S knowledge, there are no actions, suits, or proceedings pending or threatened against or affecting LICENSEE, its officers or directors in their capacity as such, its properties, or its patents in any court or before any governmental or administrative agency, which can have any material adverse effect on the business as now conducted or as currently proposed to be conducted, on the properties, the financial condition, or income of LICENSEE, or the transactions contemplated by this Agreement and LICENSEE is not in default under any order or judgment of any court or governmental or administrative agency.

(c) LICENSEE has full power and lawful authority to issue and sell the shares of COMMON STOCK on the terms and conditions contained herein.

(d) Consummation of the transactions contemplated by this Agreement in compliance with provisions of this Agreement will not result in any breach of any of the terms, conditions, or provisions of, or constitute a default under, or result in the creation of any lien, charge, or encumbrance on, any property or assets of LICENSEE pursuant to any indenture, mortgage, deed of trust, agreement, corporate charter, bylaws, contract, or other instrument to which LICENSEE is a party or by which Licensee may be bound or any law, rule, regulation, qualification, license, order or judgment applicable to Licensee or any of its property.

(e) LICENSEE is run by a management team that is experienced in operating companies in the business of commercial drug development.

19.2. LICENSOR represents and warrants to LICENSEE that as of the EFFECTIVE DATE:

(a) LICENSOR has the full right and power to perform the obligations and grant the LICENSE set forth in this Agreement;

(b) There are no outstanding agreements, assignments or encumbrances in existence inconsistent with the provisions of this Agreement;

(c) LICENSOR has not authorized in any manner any Third Party to practice the LICENSED PATENTS;

(d) LICENSOR owns or possesses all right, title, and interest in and to the LICENSED PATENTS, including exclusive, absolute, irrevocable right, title and interest thereto, free and clear of all liens, charges, encumbrances or other restrictions or limitations of any kind whatsoever;

(e) There are no licenses, options, restrictions, liens, rights of third parties, disputes, proceedings or claims relating to, affecting, or limiting its rights or the rights of LICENSEE under this Agreement with respect to, or which (i) may lead to a claim of infringement or invalidity regarding, any part or all of the LICENSED PATENTS and their use as contemplated in the underlying patent applications as presently drafted or (ii) imposes obligations upon LICENSOR or gives any rights to LICENSOR which, in either case, would adversely affect the rights of LICENSEE or the obligations of LICENSOR under this Agreement;

(f) To the best of LICENSOR'S knowledge and belief there is no claim, pending or threatened, of infringement, interference or invalidity regarding, any part or all of the LICENSED PATENTS and their use as contemplated in the underlying patent applications as presently drafted or as contemplated under this Agreement;

(g) Appendix A lists all patents issued and patent applications filed on or before the Effective Date of this Agreement within the scope of the LICENSED PATENTS and therefore subject to this Agreement and all of the inventors named in the patents and patent applications listed in Appendix A have assigned, or are under an obligation to assign, to LICENSOR all of their right, title an interest in the inventions claimed; and

(h) LICENSOR understand that the shares of COMMON STOCK have not been registered under the Securities Act by reason of a claimed exemption under the provisions of the Securities Act that depends, in part, upon the LICENSOR' investment intention. In this connection, LICENSOR hereby represent that LICENSOR are acquiring the shares of COMMON STOCK for the LICENSOR own account for investment and not with a view toward the resale or distribution to others.

ARTICLE 20 MISCELLANEOUS

20.1. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns.

20.2. This Agreement constitutes the entire agreement of the parties relating to the LICENSED PATENTS and LICENSED INFORMATION, and all prior representations, agreements and understandings, written or oral, are merged into it and are superseded by this Agreement.

20.3. The provisions of this Agreement shall be deemed separable. If any part of this Agreement is rendered void, invalid, or unenforceable, such determination shall not affect the validity or enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or unenforceable shall substantially impair the value of the entire Agreement as to either party.

20.4. Paragraph headings are inserted for convenience of reference only and do not form a part of this Agreement.

20.5. No person not a party to this Agreement, including any employee of any party to this Agreement, shall have or acquire any rights by reason of this Agreement. Nothing contained in this Agreement shall be deemed to constitute the parties partners with each other or any third party.

20.6. This Agreement may not be amended or modified except by written agreement executed by each of the parties. Other than in the event of a CHANGE OF CONTROL (as defined herein) LICENSOR'S prior written consent, which shall not be unreasonably withheld, shall be required prior to any other assignment of LICENSEE'S rights or obligations under this Agreement. Following any such assignment or CHANGE OF CONTROL, the surviving corporation shall assume all of the rights and obligations included in this Agreement. Any attempted assignment in contravention of this Article 20.6 shall be null and void and shall constitute a material breach of this Agreement. LICENSOR'S prior written consent, which shall not be unreasonably withheld, shall be required prior to any other assignment of LICENSEE'S rights or obligations under this Agreement.

20.7. LICENSEE, or any SUBLICENSEE or assignee, will not create, assume or permit to exist any lien, pledge, security interest or other encumbrance on this Agreement or any SUBLICENSE AGREEMENT.

20.8. The failure of any party hereto to enforce at any time, or for any period of time, any provision of this Agreement shall not be construed as a waiver of either such provision or of the right of such party thereafter to enforce each and every provision of this Agreement.

20.9. LICENSEE acknowledges that it is subject to and agrees to abide by the United States laws and regulations (including the Export Administration Act of 1979 and Arms Export Contract Act) controlling the export of technical data, computer software, laboratory prototypes, biological material, and other commodities. The transfer of such items may require a license from the cognizant agency of the U.S. Government or written assurances by LICENSEE that it shall not export such items to certain foreign countries without prior approval of such agency. LICENSOR neither represents that a license is or is not required or that, if required, it shall be issued.

20.10. LICENSEE is responsible for any and all wire/bank fees associated with all payments due to the LICENSOR pursuant to this Agreement.

[Signatures On Following Page]

IN WITNESS to their Agreement, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives.

DR. CESARE CASAGRANDE

By: /s/ Cesare Casagrande
Name: Dr. Cesare Casagrande
Date: August 6, 2007

NILE THERAPEUTICS, INC.

By: /s/ Peter M. Strumph
Name: Peter M. Strumph
Title: Chief Executive Officer
Date: August 6, 2007

APPENDIX A

1. U.S. Patent 6,525,078 B1 dated February 24, 2003 entitled "Compound for the Treatment of Athreosclerotic-Thrombotic Pathological Conditions."2. Canadian Patent Application No. 2,390,966 filed on June 19, 2002

3. European Patent No. 1 270 558 granted April 25, 2007, including the validation thereof in the following countries:

Country	Validation Date	Validation Number
Austria	July 25, 2007	E 360614
Belgium	n/a	n/a
France	July 20, 2007	n/a
Germany	July 20, 2007	601 28 077.6-08
Great Britain	July 9, 2007	n/a
Greece	July 24, 2007	n/a
Ireland	July 13, 2007	n/a
Italy	July 18, 2007	28416BE/2007
Spain	July 19, 2007	n/a
Switzerland & Lichtenstein	July 19, 2007	n/a
The Netherlands	July 24, 2007	n/a
Turkey	July 24, 2007	n/a

Japanese Patent Application No. 181343/2002 filed on June 21, 2002.

EXHIBIT 10.8

LEASE AGREEMENT

OFFICE LEASE TABLE OF CONTENTS

OFFICE LEASE

THIS OFFICE LEASE (the "Lease") is made as of the 21st day of March, 2007 (dated for reference purposes only) between **SEAGATE TELEGRAPH ASSOCIATES, LLC, a California limited liability corporation** (the "Landlord"), and **NILE THERAPEUTICS, a Delaware corporation** as named in the Schedule below. The term "Project" means the six story office building and other improvements commonly known as 2850 Telegraph Avenue located in the City of Berkeley ("City"), County of Alameda ("County"), California, as more particularly described in **EXHIBIT A**. The "Premises" means that portion of the Building described in the **SCHEDULE**. The Building in which the Premises are located shall be collectively referred to herein as the "Building." The following schedule (the "Schedule") is an integral part of this Lease. Terms defined in this Schedule shall have the same meaning throughout the Lease.

SCHEDULE

1. **Tenant**: NILE THERAPEUTICS, a Delaware corporation

Address: 689 Fifth Avenue, 14th Floor, New York, NY, 10022 (until lease commencement date, and thereafter, the Premises).

2. **Premises:** Approximately 2,332 rentable square feet on the Third Floor of the Building located at 2850 Telegraph Avenue, designated as Suite 310, Berkeley, CA 94704.

3. **Permitted Use:** Administrative and general office use, as a therapeutical sales office.

4. **Term:** Three (3) years.

5. **Commencement Date:** May 1, 2007, or substantial completion of Tenant Improvement Work, which ever occurs first. Rental Commencement shall be May 1,2007.

6. **Expiration Date:** April 30,2010

7. Rent and Other Charges Payable by Tenant:

a. Base Rent: Initially 2,332sf multiplied by $2.61psf, which equals Six Thousand Eighty-Seven and 00/100 ($6,087.00) Dollars per month for the first month, which shall be paid upon Lease execution, and thereafter, payable monthly as set forth in the schedule below:

FOR THE PERIOD	MONTHLY BASE RENT	ANNUAL BASE RENT
May 1,2007 through April 30, 2008	$ 6,087	$ 73,044
May 1,2008 through April 30, 2009	$ 6,320	$ 75,840
May 1,2009 through April 30, 2010	$ 6,553	$ 78,636

b. Other Periodic Payments: Tenant shall be responsible for payment of Tenant's Proportionate Share of certain charges such as operating costs and taxes in excess of the Base Year and Additional Rent.

8. **Tenant's Proportionate Share:** 3.39% of Building (based on 68,857 rentable square feet in the Building)

9. **Prepaid Rent:** $6,087.00, representing the first month Base Rent, payable upon Tenant's execution of Lease.

10. **Security Deposit:** Fourteen Thousand and NO/100 ($14,000.00) Dollars, payable upon Tenant's execution of Lease, together with the Prepaid Rent will make a total amount due along with presentation of the signed lease, in an amount equal to Twenty Thousand Eighty-Seven and NO/00 ($20,087.00) Dollars.

11. **Parking Spaces:** Four (4) spaces in common with all other tenants in the Property, available on an unreserved basis; and charged at prevailing rates, which may be adjusted by Landlord in its sole discretion, from time to time

12. **Base Year:** 2007

13. **Tenant's Real Estate Broker for this Lease:** Nick Polsky of CB Richard Ellis

14. **Landlord's Real Estate Broker for this Lease:** Ann Lovi of Collier's International

15. **Tenant Improvement Allowance:** (Intentionally Deleted)

EXHIBIT A: SITE PLAN OF PREMISES

EXHIBIT B: RULES AND REGULATIONS

EXHIBIT C: TENANT IMPROVEMENT AGREEMENT AND WORK LETTER

LEASE AGREEMENT

On the terms stated in this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, for the Term beginning on the Commencement Date and ending on the Expiration Date unless extended or sooner terminated pursuant to this Lease.

A. COMMENCEMENT DATE.

The commencement date (the **"Commencement Date"**) for this Lease is the date set forth in the Schedule. Tenant agrees and acknowledges that the Commencement Date shall not be delayed as a result of any delays which may occur in the completion of the "Tenant Improvements," as described in Section 4 and the Tenant Improvement Agreement and Work Letter, attached hereto as **EXHIBIT C**. If Landlord does not deliver possession of the Premises by the Commencement Date, for any reason whatsoever, then this Lease shall not be void or voidable, and Landlord shall not be liable to Tenant for any loss or damage resulting therefrom. Furthermore, no delay in delivery of possession shall in any way operate to extend the Expiration Date or any other obligation of Landlord or Tenant hereunder, provided, however, the Monthly Base Rent shall be waived for the period between the Commencement Date and the date when Landlord delivers possession of the Premises to Tenant. In the event Landlord is unable to deliver possession of the Premises within ninety days after the Commencement Date, either party may elect to cancel this Lease by giving the other party written notice of its election to cancel and the Lease shall be canceled as of the date of the Notice. If the delay in Commencement is in no way related to Tenant's actions or inactions, Landlord shall return any prepaid rent and Security Deposit and neither party shall have any further liability under this Lease.

B. EXPIRATION DATE.

The expiration date (the "Expiration Date") of this Lease is the date set forth in the Schedule.

C. EARLY OCCUPANCY.

During the period commencing on the date the original of this fully executed Lease is delivered to Tenant and ending on the Commencement Date (the **"Early Occupancy Period"**), Tenant shall be permitted to enter the Premises for the purposes of installing certain trade fixtures and the Tenant Improvements, provided that Tenant's occupancy of the Premises during the Early Occupancy Period shall be subject to all of the terms, covenants and conditions of this Lease, including, without limitation, Tenant's obligations under the Tenant Improvement Agreement, Section 9 (regarding Tenant's compliance with applicable laws and building rules obligation), and Section 10 (regarding Tenant's indemnity and insurance obligations), except Tenant's obligation to pay Base Rent shall not commence until the earlier of the Commencement Date or the date Tenant commences to do business in the Premises. Notwithstanding the foregoing, Tenant shall pay for all utility costs incurred by Landlord to the extent they relate to Tenant's work in the Premises during the Early Occupancy Period. In addition, if Tenant occupies any part of the Premises during the Early Occupancy Period for purposes of doing business, then Tenant shall pay all Base Rent, Operating Cost Share Rent and Tax Share Rent at the rate for the first Lease Year as set forth in the Schedule prorated for any partial month.

RENT

D. TYPES OF RENT.

Tenant shall pay the following Rent in the form of a check to Landlord at the following address (or in such other manner as Landlord may notify Tenant):

SEAGATE TELEGRAPH ASSOCIATES, LLC.
c/o SEAGATE PROPERTIES, INC.
980 Fifth Avenue
San Rafael, CA 94901

(1) **Base Rent** payable in monthly installments in advance, without prior notice or demand, the first monthly installment payable concurrently with the execution of this Lease and thereafter on or before the first day of each month of the Term in the amount set forth on the Schedule.

(2) **Operating Cost Share Rent** in an amount equal to the Tenant's Proportionate Share of the Operating Costs for the applicable fiscal year of the Lease, in excess of the Base Year, paid monthly in advance in an estimated amount. Definitions of Operating Costs and Tenant's Proportionate Share, and the method for billing and payment of Operating Cost Share Rent are set forth in Section 2.B.

(3) **Tax Share Rent** in an amount equal to the Tenant's Proportionate Share of the Taxes for the applicable fiscal year of this Lease, in excess of the Base Year, paid monthly in advance in an estimated amount. A definition of Taxes and the method for billing and payment of Tax Share Rent are set forth in Sections 2.B and 2.C.

(4) **Additional Rent** in the amount of all costs, expenses, liabilities, and amounts which Tenant is required to pay under this Lease, excluding Base Rent, Operating Cost Share Rent, and Tax Share Rent, but including any late charge and any interest for late payment of any item of rent.

(5) **Rent** as used in this Lease means Base Rent, Operating Cost Share Rent, Tax Share Rent and Additional Rent. Tenant's agreement to pay Rent is an independent covenant. All payments due from Tenant to Landlord hereunder shall be paid to Landlord, without notice, demand, deduction, recoupment, offset or counterclaim, and without relief from any valuation or appraisement laws, and in lawful money of the United States of America in the manner specified in Section 2.

E. PAYMENT OF OPERATING COST SHARE RENT AND TAX SHARE RENT.

(1) **Payment of Estimated Operating Cost Share Rent and Tax Share Rent** Landlord shall estimate the Operating Costs and Taxes of the Project by March 1 of each fiscal year, or as soon as reasonably possible thereafter. Landlord may revise these estimates whenever it obtains more accurate information, such as the final real estate tax assessment or tax rate for the Project. Within ten (10) days after receiving the original or revised estimate from Landlord, Tenant shall pay Landlord one-twelfth (l/12th) of Tenant's Proportionate Share, in excess of the Base Year, of this estimate, multiplied by the number of months that have elapsed in the applicable Lease Year (as defined in Section 2.C.(4) hereof) to the date of such payment including the current month, minus payments previously made by Tenant for the months elapsed. On the first day of each month thereafter, Tenant shall pay Landlord one-twelfth (l/12th) of Tenant's Proportionate Share of this estimate, until a new estimate becomes applicable.

(2) **Correction of Operating Cost Share Rent** Landlord shall deliver to Tenant a report for the previous fiscal year (the "Operating Cost Report") by May 1st of each Lease Year, or as soon as reasonably possible thereafter, setting forth (a) the actual Operating Costs Incurred, (b) the amount of Operating Cost Share Rent due from Tenant, and (c) the amount of Operating Cost Share Rent paid by Tenant. Within thirty (30) days after such delivery, Tenant shall pay to Landlord the amount due minus the amount paid. If the amount paid exceeds the amount due, Landlord shall apply the excess to Tenant's payments of Operating Cost Share Rent next coming due or if the Lease has expired, Landlord shall promptly pay any such excess to Tenant and Tenant shall promptly pay any amounts then due.

(3) **Correction of Tax Share Rent** Landlord shall deliver to Tenant a report for the previous Lease Year (the "Tax Report") by May 1SI of each Lease Year, or as soon as reasonably possible thereafter, setting forth (a) the actual Taxes, (b) the amount of Tax Share Rent due from Tenant, and (c) the amount of Tax Share Rent paid by Tenant. Within thirty (30) days after such delivery, Tenant shall pay to Landlord the amount due from Tenant minus the amount paid by Tenant. If the amount paid exceeds the amount due, Landlord shall apply any excess as a credit against Tenant's payments of Tax Share Rent next coming due or if the Lease has expired, Landlord shall promptly pay any such excess to Tenant and Tenant shall promptly pay any amounts then due.

F. DEFINITIONS.

(1) **Included Operating Costs "Operating Costs"** means any expenses, costs and disbursements of any kind other than Taxes, paid or incurred by Landlord in connection with the management, maintenance, operation, insurance (including the related deductibles), repair and other related activities in connection with any part of the Project and of the personal property, fixtures, machinery, equipment, systems and apparatus used in connection therewith, including the cost of providing those services required to be furnished by Landlord under this Lease and a management fee equal to five (5%) percent of all Gross Rental derived from the Building ("Gross Rental" shall mean Base Rent and any Additional Rent payable by tenants). Operating Costs shall also include the costs of any capital improvements which are intended to reduce Operating Costs or improve safety, and those made to keep the Project in compliance with governmental requirements applicable from time to time or to replace existing capital improvements, facilities and equipment within the Building or the common areas of the Project, such as the roof membrane, the roof, structural elements of the Building, and resurfacing of the parking areas (collectively, **"Included Capital Items"**); provided, that the costs of any Included Capital Item shall be amortized by Landlord, together with an amount equal to interest at ten (10%) percent per annum, over the estimated useful life of such item and such amortized costs are only included in Operating Costs for that portion of the useful life of the Included Capital Item which falls within the Term, unless the cost of the Included Capital Item is less than Ten Thousand ($10,000) Dollars in which case it shall be expensed in the year in which it was incurred. Operating Costs shall not include Property Taxes, depreciation on the Building other than depreciation on exterior window coverings provided by Landlord and carpeting in public corridors and common areas and the personal property referred to above; costs of tenants' improvements in excess of tenant standard; real estate brokers' commissions, attorneys' fees and expenses incurred in connection with negotiations or disputes with Building tenants or prospective Building tenants and any expense to the extent Landlord receives direct reimbursement by tenants, insurers or other third parties. Notwithstanding anything to the contrary contained in this Section 2.C. (1), Operating Costs shall only include (i) Operating Costs fairly allocable to the Building, and (ii) a proportionate share (based on the gross rentable area of the Building as a percentage of the gross rentable area of all of the buildings in the Project) of all Operating Costs which relate to the Project in general and are not fairly allocable to any one building in the Project. If the Project is not fully occupied during any portion of any Lease Year, Landlord may adjust Operating Costs to equal what would have been incurred by Landlord had the Project been fully occupied. Landlord may incorporate such adjustments in its estimates of Operating Costs.

(2) **Taxes "Taxes"** means any and all taxes, assessments and charges of any kind, general or special, ordinary or extraordinary, levied against the Project, which Landlord shall pay or become obligated to pay in connection with the ownership, leasing, renting, management, use, occupancy, control or operation of the Project or of the personal property, fixtures, machinery, equipment, systems and apparatus used in connection therewith. Taxes shall include real estate taxes, personal property taxes, sewer rents, water rents, special or general assessments, transit taxes, ad valorem taxes, and any tax levied by any state, county, municipality or other governmental authority on the rents hereunder or the interest of Landlord under this Lease (the "Rent Tax"). Taxes shall also include all fees and other costs and expenses paid by Landlord in reviewing any tax and in seeking a refund or reduction of any Taxes, whether or not the Landlord is ultimately successful. Taxes shall also include any assessments or fees paid to any business park owners association, or similar entity, which are imposed against the Project pursuant to any Covenants, Conditions and Restrictions ("CC&R's") recorded against the Project and any installments of principal and interest required to pay any existing or future general or special assessments for public improvements, services or benefits, and any increases resulting from reassessments imposed in connection with any change in ownership or new construction. Notwithstanding anything to the contrary contained in this Section 2.C. (2), Taxes shall include only those Taxes (i) fairly allocable to the Building, and (ii) a proportionate share (based on the gross rentable area of the Building as a percentage of the gross rentable area of all of the buildings in the Project) of all Taxes which relate to the Project in general and are not fairly allocable to any one building in the Project. For any year, the amount to be included in Taxes (a) from taxes or assessments payable in installments, shall be the amount of the installments (with any interest) due and payable during such year, and (b) from all other Taxes, shall at Landlord's election be the amount accrued, assessed, or otherwise imposed for such year or the amount due and payable in such year. Any refund or other adjustment to any Taxes by the taxing authority, shall apply during the year in which the adjustment is made. Taxes shall not include any net income (except Rent Tax), capital, stock, succession, transfer, franchise, gift, estate or inheritance tax, except to the extent that such tax shall be imposed in lieu of any portion of Taxes.

(3) **Base Year** The term "Base Year" shall mean the Operating Costs and Taxes incurred by Landlord during the calendar year as set forth under Section 12 in the Schedule hereinabove.

(4) **Lease Year "Lease Year"** shall mean each twelve month period during the term hereof ending on December 31; provided that the first Lease Year shall commence upon the commencement of the term hereof and shall end on the next succeeding December 31, and the last Lease Year shall end upon the expiration of the term hereof.

G. COMPUTATION OF BASE RENT AND RENT ADJUSTMENTS.

(1) **Prorations** If this Lease begins on a day other than the first day of a month, the Base Rent, Operating Cost Share Rent and Tax Share Rent shall be prorated for such partial month based on the actual number of days in such month. If this Lease begins on a day other than the first day, or ends on a day other than the last day of the Lease Year, Operating Cost Share Rent and Tax Share Rent shall be prorated for the applicable Lease Year.

(2) **Default Interest** Any sum due from Tenant to Landlord not paid when due shall bear interest from the date due until paid at the lesser of eighteen (18%) percent per annum or the maximum rate permitted by law.

(3) **Books and Records** Landlord shall maintain books and records reflecting the Operating Costs and Taxes in accordance with its standard operating procedures and practice and generally accepted accounting principles. Provided Tenant is not otherwise in default under this Lease, Tenant and its certified public accountant shall have the right to inspect Landlord's records at Landlord's applicable local office or other location designated by Landlord upon at least seventy-two (72) hours prior written notice during normal business hours during the ninety (90) days following the respective delivery of the Operating Cost Report or the Tax Report. The results of any such inspection shall be kept strictly confidential by Tenant and its agents, and Tenant and its certified public accountant must agree, in their contract for such services, to such confidentiality restrictions and shall specifically agree that the results shall not be made available to any other tenant of the Project. Unless Tenant sends to Landlord any written exception to either such report within said ninety-day (90) period, such report shall be deemed final and accepted by Tenant. Tenant shall pay the amount shown on both reports in the manner prescribed in this Lease, whether or not Tenant takes any such written exception, without any prejudice to such exception. If Tenant makes a timely exception, Landlord shall cause its independent certified public accountant to issue a final and conclusive resolution of Tenant's exception. Tenant shall pay the cost of such certification unless Landlord's original determination of annual Operating Costs and Taxes in the aggregate overstated the amounts thereof by more than five (5%) percent.

(4) **Miscellaneous** So long as Tenant is in default of any obligation under this Lease, Tenant shall not be entitled to any refund of any amount from Landlord. If this Lease is terminated for any reason prior to the annual determination of Operating Cost Share Rent or Tax Share Rent, either party shall pay the full amount due to the other within fifteen (15) days after Landlord's notice to Tenant of the amount when it is determined. Landlord may commingle any payments made with respect to Operating Cost Share Rent or Tax Share Rent, without payment of interest.

PREMISES

The exact boundaries of the Premises shall extend to the unfinished interior surface of all perimeter walls, except glazing, which shall be included within the Premises, the unfinished surface of all floors, and the underside of the floor above the Premises that forms the ceiling of the Premises. Notwithstanding the foregoing, the Premises shall not be deemed to include the roof, the exterior surface of the walls of the Premises, any structural portions of the Building or any utility installations serving other portions of the Building. Landlord reserves to itself the use of the roof, exterior walls and the area beneath the Premises, together with the right to install, maintain, use, repair and replace plumbing, telephone facilities, equipment, machinery, connections, pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Building. The square footage of the Premises shall be determined in accordance with the BOMA Standards. Not later than 15 days before the Commencement Date, Tenant shall have the right to measure the Premises and determine the rentable square footage thereof. If the rentable square footage contained in the Premises is more or less than the square footage identified in the Schedule, then the Rent and Tenant's Proportionate Share shall be adjusted to reflect the actual rentable square footage contained within the Premises.

CONDITION OF PREMISES

Tenant represents, warrants and covenants to Landlord that, as of the date of this Lease, Tenant has conducted its own investigation of the Premises and the physical condition thereof, including, without limitation, the accessibility and location of utilities, the improvements, the presence of Hazardous Substances (defined hereinafter), and any other matters which in Tenant's judgment might affect or influence Tenant's use of the Premises or Tenant's willingness to enter into this Lease. Tenant recognizes that Landlord would not lease the Premises except on an "as is" basis and acknowledges that, except as set forth in this Lease, Landlord has made no representation of any kind in connection with the improvements to, or the physical conditions on, or bearing on the use of, the Premises. Tenant shall rely solely on Tenant's own inspection and examination of such items and not on any representations of Landlord, express or implied. Landlord shall deliver the Premises to Tenant in the same arrangement and condition as the Premises now are, reasonable wear and tear excepted, and that Landlord, except as may be expressly agreed by Landlord in writing as set forth in the Tenant Improvement Agreement and Work Letter (the "Work"), set forth herein as Exhibit C attached and made a part hereof, has no obligation to alter, repair, renovate, or render fit for Tenant's occupancy, any part of the Premises. Upon execution of this Lease, Tenant shall be deemed fully satisfied with the results of Tenant's inspection and examination of all such items. Landlord shall be solely responsible for constructing those certain interior tenant improvements ("Tenant Improvements") within the Premises in accordance with the terms and conditions set forth in the Tenant Improvement Agreement and Work Letter attached hereto as EXHIBIT C. Tenant agrees and acknowledges that Landlord shall have no liability or responsibility whatsoever for the construction of the Tenant Improvements, except that Landlord agrees to provide as set forth in the Tenant Improvement Agreement and Work Letter.

PROJECT SERVICES

Landlord shall furnish services as follows:

H. HEATING AND AIR CONDITIONING.

During the normal business hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, Landlord shall furnish heating and air conditioning to provide a comfortable temperature, in Landlord's reasonable judgment, for normal business operations, except to the extent Tenant fails to take reasonable steps to ensure the efficient heating and cooling of the Premises (e.g., keeping all exterior doors, windows and blinds closed) or installs equipment which adversely affects the temperature maintained by the air conditioning system; provided if the outside temperature exceeds 95° degrees F dry bulb, then Tenant acknowledges that the temperatures within the Premises may be slightly higher than usual. If Tenant installs such equipment, Landlord may reasonably require that Tenant install supplementary air conditioning units in the Premises and pay the cost of installation, operation and maintenance thereof. Landlord shall furnish heating and air conditioning after business hours if Tenant provides Landlord reasonable prior notice, and pays Landlord all the then current charges for such additional heating or air conditioning. The current hourly charge for after-hours HVAC use is $35.00 per hour, provided that Landlord reserves the right to change this rate at any time during the Term without notice to Tenant.

I. ELEVATORS.

If the Building is equipped with one or more elevators, Landlord shall provide passenger elevator service during normal business hours to Tenant in common with Landlord and all other tenants. Landlord shall provide limited passenger service at other times, except in case of an emergency. If the Building is equipped with a freight elevator, Landlord shall provide freight elevator service at reasonable hours at Tenant's request, subject to scheduling by the Landlord and payment for the service by Tenant.

J. ELECTRICITY.

Landlord shall provide sufficient electricity to operate normal office equipment. Tenant shall not install or operate in the Premises any electrically operated equipment or other machinery, other than business machines and equipment normally employed for general office use which do not require high electricity consumption for operation, without obtaining the prior written consent of Landlord. If any or all of Tenant's equipment requires electricity consumption in excess of that which is necessary to operate normal office equipment, such consumption (including consumption for computer or telephone rooms and special HVAC equipment) shall be submetered by Landlord at Tenant's expense, and Tenant shall reimburse Landlord as Additional Rent for the cost of its sub-metered consumption based upon Landlord's average cost of electricity. Such Additional Rent shall be in addition to Tenant's obligations pursuant to Section 2.A (4) to pay its Proportionate Share of Operating Costs.

K. WATER.

Landlord shall furnish hot and cold tap water for drinking and toilet purposes. Tenant shall pay Landlord for water furnished for any other purpose as Additional Rent at rates fixed by Landlord. Such Additional Rent shall be in addition to Tenant's obligations pursuant to Section 2.A (4) to pay its Proportionate Share of Operating Costs. Tenant shall take reasonable actions so as to avoid allowing water to be wasted.

L. JANITORIAL SERVICE.

Landlord shall furnish janitorial service Monday through Friday as generally provided to other tenants in the Project and consistent with specifications for other Class A office buildings for the City of Berkeley, California. With reasonable prior notice from Tenant, Landlord shall also provide additional janitorial service on weekends or holidays at Tenant's expense, and Tenant shall reimburse Landlord as Additional Rent for the cost of such additional janitorial services. Such Additional Rent shall be in addition to Tenant's obligations pursuant to Section 2.A (4) to pay its Proportionate Share of Operating Costs.

M. INTERRUPTION OF SERVICES.

Landlord shall not be liable for any failure to furnish, stoppage of, or interruption in furnishing any of the services or utilities, when such failure is caused by accident, breakage, repairs, strikes, lockouts, labor disputes, labor disturbances, governmental regulation, civil disturbances, acts of war, moratorium or other governmental action, or any other cause beyond Landlord's reasonable control, and, in such event, Tenant shall not be entitled to any damages nor shall any failure or interruption abate or suspend Tenant's obligation to pay Rent required under this Lease or constitute or be construed as a constructive or other eviction of Tenant or relieve Tenant from fulfillment of any covenant or agreement hereof. Further, in the event any governmental authority or public utility promulgates or revises any law, ordinance, rule or regulation, or issues mandatory controls or voluntary controls relating to the use or conservation of energy, water, gas, light or electricity, the reduction of automobile or other emissions, or the provision of any other utility or service, Landlord may take any reasonably appropriate action to comply with such law, ordinance, rule, regulation, mandatory control or voluntary guideline and Tenant's obligations hereunder shall not be affected by any such action of Landlord. The parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts, or ensure safety of persons or property. The risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's property and interests, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such criminal acts and other losses, as further described in this Lease. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by law.

ALTERATIONS AND REPAIRS

N. LANDLORD'S CONSENT AND CONDITIONS.

Tenant shall not make any improvements or alterations to the Premises (the "Work") without in each instance submitting plans and specifications for the Work to Landlord and obtaining Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Landlord will be deemed to be acting reasonably in withholding its consent for any Work which (a) impacts the base structural components or systems of the Building, (b) impacts any other tenant's premises, or (c) is visible from outside the Premises. Tenant shall pay for the cost of all Work, including the cost of any and all approvals, permits, fees and other charges which may be required as a condition of performing such Work. The following requirements shall apply to all Work:

(1) **Prior to commencement**, Tenant shall furnish to Landlord building permits, and certificates of insurance reasonably satisfactory to Landlord.

(2) **Tenant shall perform** all Work so as to maintain peace and harmony among other contractors serving the Project and shall avoid interference with other work to be performed or services to be rendered in the Project.

(3) **The Work** shall be performed in a good and workmanlike manner, meeting the standard for construction and quality of materials in the Building, and shall comply with all insurance requirements and all applicable governmental laws, ordinances and regulations ("Governmental Requirements").

(4) **Tenant shall perform** all Work so as to minimize or prevent disruption to other tenants, and Tenant shall comply with all reasonable requests of Landlord in response to complaints from other tenants.

(5) **Tenant shall perform** all Work in compliance with any "Policies, Rules and Procedures for Construction Projects" which may be in effect at the time the Work is performed. As of the date of this Lease, there are no Policies, Rules and Procedures for Construction Projects which have been established for this Project.

(6) **Tenant shall reimburse** Landlord any and all costs and expenses incurred by Landlord in connection with the construction of the Work, including, without limitation, utilities, trash removal, and temporary barricades, and the review of any plans and specifications. Tenant shall permit Landlord to supervise all Work. Landlord may charge a supervisory fee not to exceed fifteen percent (15%) of labor, materials, and all other costs of the Work whether or not Landlord's employees or contractors perform the Work.

(7) **Upon completion,** Tenant shall furnish Landlord with full and final statutory waivers of liens, as-built plans and specifications, and receipted bills covering all labor and materials, and all other close-out documentation relating to the Work, including any other information required under any "Policies, Rules and Procedures for Construction Projects" which may be in effect at such time.

(8) **Notwithstanding anything** to the contrary contained in this Lease, Landlord's approval of any contractors, subcontractors, engineers, architects, suppliers, plans or specifications submitted pursuant hereto shall not be deemed a warranty as to the adequacy of the design, workmanship, quality of materials or compliance with any applicable laws.

(9) **Landlord may require** Tenant to provide Landlord at Tenant's sole cost and expense a completion and performance bond in an amount equal to the estimated cost of the Work to insure Landlord against any liability for mechanic's or materialmens' liens and to insure the completion of the Work.

O. REPAIRS.

If any part of the mechanical, electrical or other systems in the Premises (e.g., HVAC, life safety or automatic fire extinguisher/sprinkler system) shall be damaged, Tenant shall promptly notify Landlord, and Landlord shall repair such damage. Landlord may also at any reasonable time make any repairs or alterations which Landlord deems necessary for the safety or protection of the Project, or which Landlord is required to make by any court or pursuant to any Governmental Requirement. Tenant shall at its expense make all other repairs necessary to keep the Premises, and Tenant's fixtures and personal property, in good order, condition and repair in compliance with all applicable Governmental Requirements; to the extent Tenant fails to do so, Landlord may make such repairs itself. The cost of any repairs made by Landlord on account of Tenant's default, or on account of the misuse or neglect by Tenant or its invitees, contractors or agents anywhere in the Project, shall become Additional Rent payable by Tenant on demand. It is a condition precedent to all Landlord's obligations to repair and maintain that Tenant shall have notified Landlord of the need of such repairs or maintenance. Tenant waives the provisions of Sections 1941 and 1942 of the California Civil Code and any similar or successor law regarding Tenant's right to make repairs and deduct the cost of such repairs from the Rent due under this Lease.

P. NO LIENS.

Tenant has no authority to cause or permit any lien or encumbrance of any kind to affect Landlord's interest in the Project; any such lien or encumbrance shall attach to Tenant's interest only. If any mechanic's lien shall be filed or claim of lien made for work or materials furnished to Tenant, then Tenant shall at its expense within ten (10) days thereafter either discharge or contest the lien or claim. If Tenant contests the lien or claim, then Tenant shall (i) within such ten (10) day period, provide Landlord adequate security for the lien or claim, (ii) contest the lien or claim in good faith by appropriate proceedings that operate to stay its enforcement, and (iii) pay promptly any final adverse judgment entered in any such proceeding. If Tenant does not comply with these requirements, Landlord may discharge the lien or claim, and the amount paid, as well as attorney's fees and other expenses incurred by Landlord, shall become Additional Rent payable by Tenant on demand.

Q. OWNERSHIP OF IMPROVEMENTS.

All Work as defined in this Section 6, partitions, hardware, and all other improvements and all fixtures except trade fixtures, constructed in the Premises by either Landlord or Tenant, (i) shall become Landlord's property upon termination without compensation to Tenant, or (ii) shall at Landlord's option be removed in accordance with Section 6.E below.

R. REMOVAL UPON TERMINATION.

Upon the termination of this Lease or Tenant's right of possession Tenant shall remove from the Premises and Project its trade fixtures, furniture, moveable equipment and other personal property, any improvements which Landlord elects pursuant to Section 6.E shall be removed by Tenant, and any improvements to any portion of the Project other than the Premises. If Tenant does not timely remove such property, then Tenant shall be conclusively presumed to have, at Landlord's election (i) conveyed such property to Landlord without compensation or (ii) abandoned such property, and Landlord may dispose of or store any part thereof in any manner at Tenant's sole cost, without waiving Landlord's right to claim from Tenant all expenses arising out of Tenant's failure to remove the property, and without liability to Tenant or any other person. Landlord shall have no duty to be a bailee of any such personal property. If Landlord elects abandonment, Tenant shall pay to Landlord, upon demand, any expenses incurred for disposition.

USE OF PREMISES

S. LIMITATION ON USE.

Tenant shall use the Premises only for the Permitted Use stated in the Schedule. Any material change in the character of Tenant's business or use shall constitute a default under this Lease. Nothing contained in this Lease shall grant to Tenant the exclusive right to conduct within the Building the business to be conducted by Tenant within the Premises or otherwise limit the right of Landlord to lease space in the Building to any other tenants as it deems proper. Tenant shall not conduct or permit to be conducted in the Premises any sale by auction, or any fire, distress or bankruptcy sale, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, or cause, maintain or permit any nuisance in, or about the Premises or commit or suffer to be committed any waste in or upon the Premises. Tenant shall not allow any use of the Premises which will negatively affect the cost of coverage of Landlord's insurance on the Project. Tenant shall not allow any inflammable or explosive liquids or materials to be kept on the Premises. Tenant shall not allow any use of the Premises which would cause the value or utility of any part of the Premises to diminish or would interfere with any other tenant or with the operation of the Project by Landlord. Tenant shall not permit any nuisance or waste upon the Project, or allow any offensive noise or odor in or around the Project. At the end of each business day, or more frequently if necessary, Tenant shall deposit all garbage and other trash (excluding any inflammable, explosive and/or hazardous materials) in trash bins or containers approved by Landlord in locations designated by Landlord from time to time. If any governmental authority shall deem the Premises to be a "place of public accommodation" under the Americans with Disabilities Act or any other comparable law as a result of Tenant's use, Tenant shall either modify its use to cause authority to rescind its designation or to be responsible for any alterations, structural or otherwise, required to be made to the Building or the Premises under such laws.

T. SIGNS.

Tenant shall not place on any portion of the Premises any sign, placard, lettering, banner, displays or other advertising or communicative material which is visible from the exterior of the Building without the prior written approval of Landlord. Any approved signs shall strictly conform to all Governmental Restrictions, any CC&R's recorded against the Project, and any sign criteria which may be established by Landlord and in effect at the time, and shall be installed (and removed upon the Expiration Date) at Tenant's expense. Tenant, at its sole cost and expense, shall maintain such signs in good condition and repair, (including the repair of any damage caused to the Building and/or Project upon the removal of such signs). Landlord current Signage Standards are on file and available upon request from the Landlord's corporate office, and are subject to change from time to time. Notwithstanding the foregoing, Landlord, at its cost, shall include Tenant's name in the lobby directory for the Building.

U. PARKING.

Landlord shall provide Tenant up to the number of parking stalls specified in the Schedule on an unreserved basis in Landlord's parking facilities (the "Parking Facilities"). The parking stalls are charged to Tenant at the prevailing rates which may be adjusted from time to time by Landlord in its sole discretion. The use of the Parking Facilities shall be in common with other tenants of the Project upon a first-come, first-served basis and on other reasonable, nondiscriminatory terms and conditions, as may from time to time be established by Landlord. Tenant agrees to cooperate with Landlord and other tenants in the Project in the use of the Parking Facilities. Access to the surface parking lot and underground parking garage shall be subject to control by Landlord. Landlord reserves the right in its sole discretion to alter, change or improve the Parking Facilities. Landlord shall not be liable to Tenant, nor shall this Lease be affected, if any parking is impaired by moratorium, initiative, referendum, law, ordinance, regulation or order passed, issued or made by any governmental or quasi-governmental body. Landlord assumes no liability for damage or injuries, theft, collision, fire or damage of Tenant, its employees, customers and invitees and/or their vehicles and Landlord shall not be responsible for articles left in vehicles or for damages for loss of use of any vehicle. Tenant waives any and all claims against Landlord for any injury to or death of any person or damage to or destruction of property in or about the Parking Facilities, including, without limitation, loss of use of any one or all of the Parking Facilities.

V. PROHIBITION AGAINST USE OF ROOF AND STRUCTURE OF BUILDING.

Tenant shall be prohibited from using any all or any portion of the roof of the Building or any portion of the structure of the Building during the Tenancy of this Lease (or any extensions thereof) for any purposes.

INTRABUILDING NETWORK CABLES

Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant agree as follows:

W. TENANT'S RESPONSIBILITY.

At its sole cost and expense, Tenant agrees to install, maintain, and repair all telecommunication cabling, wiring, and risers in the Premises or through the Building to Tenant's telephone panel as may be required to for Tenant's use of the Premises. Any costs incurred by Landlord caused by such installation or to comply with governmental laws, rules, and regulations in connection with such installation, will be for the account of Tenant, and within ten (10) days Tenant will pay all invoices for those costs as Additional Rent. Tenant shall also be responsible, at Tenant's sole cost and expense, for any of Tenant's telephones, telecopiers, computers, routers, telephone switching, telephone panels and related equipment.

X. LANDLORD'S RIGHT OF ENTRY.

In addition to Landlord's other rights of entry under this Lease, Landlord has the right to enter the Premises to install, maintain, and repair telecommunications cabling, wiring, and risers for the benefit of other tenants of the Building.

Y. ALTERATIONS BY TENANT.

Regardless of Tenant's other rights under the Lease to make alterations to the Premises, Tenant may not alter or modify the telecommunication cabling, wiring, and risers located in the Premises or throughout the Building or otherwise without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion.

Z. SERVICE PROVIDER.

Tenant agrees that the installation, maintenance, and repair of Tenant's telecommunications cabling, wiring and risers in the Premises or through the Building will be done by Landlord's approved service provider or any other independent contractor that Landlord may approve in writing in advance, which approval shall not be unreasonably withheld.

AA. INDEMNIFICATION.

Tenant agrees to indemnify, release, defend, and hold Landlord harmless against any damages, claims, or other liability resulting from the installation, repair, or maintenance, of Tenant's telecommunications calling, wiring and risers in the Premises or through the Building including, but not limited to, the costs of repair, the costs of handling complaints from other tenants in the Building, and any damages resulting from the interruption in service to other tenants in the Building. Tenant releases Landlord from any losses, claims, injuries, damages, or other liability, including, but not limited to, consequential damages, whether to persons or property and no matter how caused, in any way connected with the interruption of telecommunications services to the Premises due to the failure of any telecommunications cabling, wiring, or risers. Tenant expressly waives any right to claim that the interruption of such services constitutes grounds for a claim of abatement of rent, of constructive eviction, or for termination of this Lease.

GOVERNMENTAL REQUIREMENTS AND BUILDING RULES

Tenant shall comply with all Governmental Requirements applying to its use, repair and maintenance of the Premises. Landlord and Tenant acknowledge and agree that Tenant's obligation to comply with the legal requirements as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation hereunder shall include, without limitation, the responsibility of Tenant to make substantial repairs and alterations to the Premises (including any Improvements), regardless of, among other factors, the relationship of the cost of curative action to the rental under this Lease, the length of the then remaining term of this Lease, the relative benefit of the repairs to Tenant, the degree in which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that Landlord or Tenant contemplated the particular Governmental Requirements involved, and whether the Governmental Requirements involved are related to Tenant's particular use of the Premises. No occurrence or situation arising during the term hereof, nor any present or future Governmental Requirements, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligations hereunder, or shall give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Landlord. Tenant waives any rights now or hereafter conferred upon it by any existing or future law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of rent, or to compel Landlord to make any repairs to comply with any such Governmental Requirements, on account of any such occurrence or situation. Tenant shall also comply with all reasonable rules for the Project which may be established and amended from time to time by Landlord. The present rules and regulations are contained in EXHIBIT B. Failure by another tenant to comply with the rules or failure by Landlord to enforce them shall not relieve Tenant of its obligation to comply with the rules or make Landlord responsible to Tenant in any way. Landlord shall use reasonable efforts to apply the rules and regulations uniformly with respect to Tenant and any other tenants in the Project under leases containing rules and regulations similar to this Lease. All Work, alterations, repairs or improvements performed by Tenant shall comply with the provisions of Section 6 of this Lease and any applicable "Policies, Rules and Regulations for Construction Projects" which may be reasonably established by Landlord and in effect at the time. Notwithstanding the foregoing, Landlord shall be responsible for all ADA compliance costs required to be incurred in connection with the common areas of the Project, except that Tenant shall be solely responsible for all ADA compliance costs which are required to be incurred in connection with the common areas of the Project as a result of Tenant's particular use or activities (e.g., alterations or repairs). Tenant shall be solely responsible for all ADA compliance costs which are required to be incurred within the Premises during the Term. Landlord makes no representations or warranties regarding the Project's or the Premises' compliance with the ADA.

WAIVER OF CLAIMS; INDEMNIFICATION; INSURANCE

BB. WAIVER OF CLAIMS.

To the extent permitted by law, Tenant waives any claims it may have against Landlord or its officers, directors, employees or agents for business interruption or damage to property sustained by Tenant as the result of any act or omission of Landlord, its agents or employees. To the extent permitted by law, Landlord waives any claims it may have against Tenant or its officers, directors, employees or agents for loss of rents or damage to property sustained by Landlord as the result of any act or omission of Tenant, its agents or employees.

CC. INDEMNIFICATION.

Except for Landlord's or its agent's, employees or contractors willful misconduct or active negligence, Tenant shall indemnify, defend, and hold Landlord harmless from any and all claims, liability, damage or loss, and from and against any and all costs and expenses, including reasonable attorneys' fees, arising out of: (a) any injury to or death of any person or damage to or destruction of any property, from any cause whatsoever occurring in or about the Premises or the Building or the Project, and, if occurring in or about any portion of the common areas or elsewhere in or about the Building or the Project, when such injury or damage shall be caused in whole or in part by the act, neglect, default or omission of any duty by Tenant, its agents, employees or invitees or otherwise by any conduct, or (b) transactions of any of said persons in or about or concerning the Premises, including any failure of Tenant to observe or perform any of its obligations. The provisions of this Section 10.B shall survive the termination of this Lease.

Except for Tenant's or its employees, agents, contractors or invitees willful misconduct or active negligence, Landlord shall indemnify, defend, and hold Tenant harmless from any and all claims, liability, damage or loss, and from and against any and all costs and expenses, including reasonable attorneys' fees, arising out of: any injury to or death of any person or damage to or destruction of any property, occurring in or about the Building or the Project, when such injury or damage shall be caused in whole or in part by the willful misconduct or active negligence of Landlord, its agents, employees or contractors.

DD. TENANT'S INSURANCE.

Tenant shall maintain insurance as follows:

(1) **Commercial General Liability Insurance**, with (a) contractual liability including the indemnification provisions contained in this Lease, (b) a severability of interest endorsement, (c) limits of not less than One Million Dollars ($1,000,000) combined single limit per occurrence and not less than Two Million Dollars ($2,000,000) in the aggregate for bodily injury, sickness or death, and property damage, and umbrella coverage of not less than Three Million Dollars ($3,000,000).

(2) **Property Insurance against** "All Risks" of physical loss covering the replacement cost of all Improvements. Tenant waives all rights of subrogation, and Tenant's property insurance shall include a waiver of subrogation in favor of Landlord.

(3) **Workers' Compensation** or similar insurance in form and amounts required by law, and Employer's Liability with not less than the following limits:

Each Accident $500,000
Disease - Policy Limit $500,000
Disease - Each Employee $500,000

(4) **Such insurance** which Tenant is required to maintain shall contain a waiver of subrogation provision in favor of Landlord and its agent. If in the opinion of Landlord's insurance advisor, based on a substantial increase in recovered liability claims, the aforesaid amounts of coverage are no longer adequate, then such coverage shall be proportionately increased. Tenant's insurance shall be primary and not contributory to that carried by Landlord, its agents, or mortgagee. Landlord, and if any, Landlord's building manager or agent, mortgagee and ground lessor shall be named as additional insureds. The company or companies writing any insurance which Tenant is required to maintain under this Lease, as well as the form of such insurance, shall at all times be subject to Landlord's approval, and any such company shall be licensed to do business in the State of California. Such insurance companies shall have a A.M. Best rating of A VI or better. Should this Lease be canceled due to damage or destruction to or condemnation of the Premises and Tenant is thus relieved of its obligation to restore or rebuild the improvements on the Premises, any insurance proceeds for damage to the Premises, including all fixtures and leasehold improvements thereon, shall belong to Landlord, free and clear of any claims by Tenant.

(5) **Tenant shall cause** any contractor of Tenant performing work on the Premises to maintain insurance as follows, with such other terms, coverages and insurers, as Landlord shall reasonably require from time to time:

(a) **Commercial General Liability Insurance**, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement, and contractor's protective liability coverage, to afford protection with limits, for each occurrence, of not less than One Million Dollars ($ 1,000,000) with respect to personal injury, death or property damage.

(b) **Workers' Compensation** or similar insurance in form and amounts required by law, and Employer's Liability with not less than the following limits:

Each Accident $500,000
Disease - Policy Limit $500,000
Disease - Each Employee $500,000

Such insurance shall contain a waiver of subrogation provision in favor of Landlord and its agents. Tenant's contractor's insurance shall be primary and not contributory to that carried by Tenant, Landlord, their agents or mortgagees. Tenant and Landlord, and if any, Landlord, mortgagee or ground lessor shall be named as additional insured on Tenant's contractor, insurance policies.

EE. INSURANCE CERTIFICATES.

Tenant shall deliver to Landlord certificates evidencing all required insurance no later than five (5) days prior to the Commencement Date and each renewal date. Each certificate will provide for thirty (30) days prior written notice of cancellation to Landlord and Tenant. E.

FF. LANDLORD'S INSURANCE.

Landlord shall maintain "All-Risk" property insurance at replacement cost, including loss of rents, on the Building, and Commercial General Liability insurance policies covering the common areas of the Project, each with such terms, coverages and conditions as are normally carried by reasonably prudent owners of properties similar to the Project. The cost of any premium for Landlord's insurance shall be included as part of the Operating Costs. With respect to property insurance, Landlord and Tenant mutually waive all rights of subrogation, and the respective "All-Risk" coverage property insurance policies carried by Landlord and Tenant shall contain enforceable waiver of subrogation endorsements.

FIRE AND OTHER CASUALTY

GG. TERMINATION.

If a fire or other casualty causes substantial damage to the Building or the Premises, and sufficient insurance proceeds will be available to Landlord to cover the cost of any restoration to the Building and Premises, Landlord shall engage a registered architect to certify within one (1) month of the casualty to both Landlord and Tenant the amount of time needed to restore the Building and the Premises to tenantability, using standard working methods without the payment of overtime and other premiums. If the time needed exceeds twelve (12) months from the beginning of the restoration, or two (2) months therefrom if the restoration would begin during the last twelve (12) months of the Lease, then in the case of the Premises, either Landlord or Tenant may terminate this Lease, and in the case of the Building, Landlord may terminate this Lease, by notice to the other party within ten (10) days after the notifying party's receipt of the architect's certificate. If sufficient insurance proceeds will not be available to Landlord to cover the cost of any restoration to the Building or the Premises, Landlord may terminate this Lease by written notice to Tenant. Any termination pursuant to this Section 11 .A shall be effective thirty (30) days from the date of such termination notice and Rent shall be paid by Tenant to that date, with a reasonable abatement of Rent for any portion of the space which has been untenantable after the casualty.

HH. RESTORATION.

If a casualty causes damage to the Building or the Premises but this Lease is not terminated for any reason, then subject to the rights of any mortgagees or ground lessors, Landlord shall obtain the applicable insurance proceeds and diligently restore the Building and the Premises subject to current Governmental Requirements. Landlord's obligation, should it elect or be obligated to repair or rebuild, shall be limited to the basic Premises, the building-standard tenant improvements, or the basic Building, as the case may be, and Tenant shall, at Tenant's expense, replace or fully repair its damaged improvements (including any Tenant Improvements in excess of the building standard), personal property and fixtures. Rent shall be abated on a per diem basis during the restoration for any portion of the Premises which is untenantable, except to the extent that the casualty was caused by the negligence or intentional misconduct of Tenant, its agents or employees. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the Premises, damage to Tenant's personal property and trade fixtures or any inconvenience occasioned by such damage, repair or restoration. Tenant hereby waives the provisions of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the California Civil Code, and the provisions of any similar law hereinafter enacted.

EMINENT DOMAIN

If a part of the Project is taken by eminent domain or deed in lieu thereof which is so substantial that the Premises cannot reasonably be used by Tenant for the operation of its business, then either party may terminate this Lease effective as of the date of the taking. If any substantial portion of the Project is taken without affecting the Premises, then Landlord may terminate this Lease as of the date of such taking. Rent shall abate from the date of the taking in proportion to any part of the Premises taken, provided Tenant can terminate this Lease if any material portion of the Premises is taken such that the conduct of Tenant's business activities is not reasonably possible. The entire award for a taking of any kind shall be paid to Landlord, and Tenant shall have no right to share in the award. All obligations accrued to the date of the taking shall be performed by each party.

RIGHTS RESERVED TO LANDLORD

Landlord may exercise at any time any of the following rights respecting the operation of the Project without liability to the Tenant of any kind:

II. NAME.

To change the name of all or any of the Buildings or the Project, or the street address of the Buildings or the suite number(s) of the Premises.

JJ. SIGNS.

To install, modify and/or maintain any signs on the exterior and in the interior of the Buildings or on the Project, and to approve at its sole discretion, prior to installation, any of Tenant's signs in the Premises visible from the common areas or the exterior of the Building.

KK. WINDOW TREATMENTS.

To approve, at its discretion, prior to installation, any shades, blinds, ventilators or window treatments of any kind, as well as any lighting within the Premises that may be visible from the exterior of the Building or any interior common area.

LL. KEYS.

To retain and use at any time passkeys to enter the Premises or any door within the Premises. Tenant shall be required to obtain Landlord's consent, which consent shall not be unreasonably withheld, to install additional security measures in the Premises (i.e. card reader), at Tenant's sole cost and expense; provided, however, that the installation and use of such security measures shall not interfere with Landlord's ability to access the Premises in emergencies.

MM. ACCESS.

To have access to the Premises with twenty-four (24) hour prior notice (except in the case of an emergency in which case Landlord shall have the right to immediate access) to inspect the Premises, and to perform its obligations, or make repairs, alterations, additions or improvements, as permitted by this Lease. Landlord may make repairs required of Landlord under the terms hereof or repairs to any adjoining space or utility services or make repairs, alterations or additions to any other portion of the Building or Project, provided, however, that all such work shall be done as promptly as reasonably possible, and so as to cause as little interference to Tenant as reasonably possible. Tenant hereby waives any claims for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry.

NN. PREPARATION FOR REOCCUPANCY.

To decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant abandons the Premises, without relieving Tenant of any obligation to pay Rent.

OO. HEAVY ARTICLES.

To approve the weight, size, placement and time and manner of movement within the Building of any safe, central filing system or other heavy article of Tenant's property. Tenant shall move its property entirely at its own risk.

PP. SHOW PREMISES.

To show the Premises to, prospective purchasers, brokers, lenders, mortgagees, investors, rating agencies or others at any reasonable time, provided that Landlord gives prior notice to Tenant and does not materially interfere with Tenant's use of the Premises; and to show the Premises to prospective tenants during the last six (6) months of the Term, provided that Landlord gives at least twenty-four (24) hour notice to Tenant and does not materially interfere with Tenant's use of the Premises.

QQ. RELOCATION OF TENANT.

To relocate the Tenant, upon thirty (30) days' prior written notice, from all or part of the Premises (the "Old Premises") to another area in the Project (the "New Premises"), provided that:

(1) **The size** of the New Premises is at least equal to the size of the Old Premises;

(2) **Landlord pays** the cost of moving the Tenant, including reasonable cost of telecommunications wiring, stationery and cost of moving Tenant's furnishings and improving the New Premises to the standard of the Old Premises. Tenant shall cooperate with Landlord in all reasonable ways to facilitate the move, including supervising the movement of files or fragile equipment, designating new locations for furniture, equipment and new telephone and electrical outlets, and determining the color of paint in the New Premises.

RR. USE OF LOCKBOX.

To designate a lockbox collection agent for collections of amounts due Landlord. In that case, the date of payment of Rent or other sums shall be the date of the agent's receipt of such payment or the date of actual collection if payment is made in the form of a negotiable instrument thereafter dishonored upon presentment. However, Landlord may reject any payment for all purposes as of the date of receipt or actual collection by mailing to Tenant within a reasonable time after such receipt or collection a check equal to the amount sent by Tenant.

SS. REPAIRS AND ALTERATIONS.

To make repairs or alterations to the Project and in doing so transport any required material through the Premises, to close entrances, doors, corridors, elevators and other facilities in the Project, to open any ceiling in the Premises, or to temporarily suspend services or use of common areas in the Building. Landlord may reasonably perform any such repairs or alterations during ordinary business hours, except that Tenant may require any work in the Premises to be done after business hours if Tenant pays Landlord for overtime and any other expenses incurred. Landlord may do or permit any work on any nearby building, land, street, alley or way.

TT. LANDLORD'S AGENTS.

If Tenant is in default under this Lease, possession of Tenant's funds or negotiation of Tenant's negotiable instrument by any of Landlord's agents shall not waive any breach by Tenant or any remedies of Landlord under this Lease.

UU. BUILDING SERVICES.

To install, use and maintain through the Premises, pipes, conduits, wires and ducts serving the Building, provided that such installation, use and maintenance does not unreasonably interfere with Tenant's use of the Premises.

VV. USE OF ROOF.

To permit Landlord (or any entity selected by Landlord) to install, operate, maintain and repair any satellite dish, antennae, equipment, or other facility on the roof of the Building or to use the roof of the Building in any other manner, provided that such installation, operation, maintenance, repair or use does not unreasonably interfere with Tenant's use of the Premises.

WW. OTHER ACTIONS.

To take any other action which Landlord deems reasonable in connection with the operation, maintenance or preservation of the Building and the Premises.

TENANT'S DEFAULT

Any of the following shall constitute a default by Tenant:

XX. RENT DEFAULT.

Tenant fails to pay any Rent when due after any statutory notice period;

YY. ASSIGNMENT/SUBLEASE OR HAZARDOUS SUBSTANCES DEFAULT.

Tenant defaults in its obligations under Section 19 Assignment and Sublease or Section 30 Hazardous Substances;

ZZ. OTHER PERFORMANCE DEFAULT.

Tenant fails to perform any other obligation to Landlord under this Lease, and this failure continues for ten (10) days after written notice from Landlord, except that if Tenant begins to cure its failure within the ten (10) day period but cannot reasonably complete its cure within such period, then, so long as Tenant continues to diligently attempt to cure its failure, the ten (10) day period shall be extended to sixty (60) days, or such lesser period as is reasonably necessary to complete the cure;

AAA. CREDIT DEFAULT.

One of the following credit defaults occurs:

(1) **Tenant commences** any proceeding under any law relating to bankruptcy, insolvency, reorganization or relief of debts, or seeks appointment of a receiver, trustee, custodian or other similar official for the Tenant or for any substantial part of its property, or any such proceeding is commenced against Tenant and either remains undismissed for a period of thirty (30) days or results in the entry of an order for relief against Tenant which is not fully stayed within seven (7) days after entry;

(2) **Tenant becomes** insolvent or bankrupt, does not generally pay its debts as they become due, or admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors;

(3) **Any third party** obtains a levy or attachment under process of law against Tenant's leasehold interest and such levy or attachment is not lifted or otherwise removed within fifteen (15) days.

BBB. VACATION OR ABANDONMENT DEFAULT.

Tenant vacates or abandons the Premises.

LANDLORD REMEDIES

Upon a default, Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease, to which Landlord may resort cumulatively or in the alternative:

CCC. TERMINATION OF LEASE OR POSSESSION.

If Tenant defaults, Landlord may elect by notice to Tenant either to terminate this Lease or to terminate Tenant's possession of the Premises without terminating this Lease. In either case, Tenant shall immediately vacate the Premises and deliver possession to Landlord, and Landlord may repossess the Premises and may, at Tenant's sole cost, remove any of Tenant's signs and any of its other property, without relinquishing its right to receive Rent or any other right against Tenant. In the latter case, this Lease shall continue in full force and effect as long as Landlord does not terminate this Lease, and Landlord shall have the right to collect Rent when due.

DDD. POSSESSION TERMINATION DAMAGES.

If Landlord elects to terminate Tenant's possession without terminating this Lease and Landlord takes possession of the Premises itself, then Landlord may re-let for Tenant's account all or any portion of the Premises for such rent, length of time and other terms as Landlord in its sole discretion shall determine, without any obligation to do so prior to renting other vacant areas in the Building. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in re-letting the Premises or any part thereof, including, without limitation, broker's commissions, expenses of cleaning and redecorating the Premises required by the reletting and like costs. Tenant shall pay to Landlord the Rent and other sums due under this Lease on the date the Rent is due, less the rent and other sums received by Landlord from any releasing of the Premises. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession.

EEE. LEASE TERMINATION DAMAGES.

If Landlord elects to terminate this Lease, then this Lease shall terminate on the date for termination set forth in such notice. Tenant shall immediately vacate the Premises and deliver possession to Landlord, and Landlord may repossess the Premises and may, at Tenant's sole cost, remove any of Tenant's signs and any of its other property, without relinquishing its right to receive Rent or any other right against Tenant. On termination, Landlord has the right to recover from Tenant as damages:

(1) **The worth** at the time of award of unpaid Rent and other sums due and payable which had been earned at the time of termination; plus

(2) **The worth** at the time of award of the amount by which the unpaid Rent and other sums due and payable which after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus

(3) **The worth** at the time of award of the amount by which the unpaid Rent and other sums due and payable for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; plus

(4) **Any other amount** necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which, in the ordinary course of things, would be likely to result therefrom, including, without limitation, any costs or expenses incurred by Landlord: (i) in retaking possession of the Premises; (ii) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering or rehabilitating the Premises or any portion thereof, including such acts for re-letting to a new tenant or tenants; (iii) for leasing commissions; or (iv) for any other costs necessary or appropriate to re-let the Premises; plus

(5) **At Landlord's election**, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California. The "worth at the time of award" of the amounts referred to in Sections 15.C (1) and 15.C (2) is computed by allowing interest at the maximum rate permitted by law on the unpaid rent and other sums due and payable from the termination date through the date of award. The "worth at the time of award" of the amount referred to in Section 15.C (3) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Tenant waives redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other present or future law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any default of Tenant hereunder.

FFF. CONTINUATION OF LEASE.

In the event Tenant breaches this Lease and abandons the Premises and Landlord does not elect to terminate this Lease by reason of such breach and abandonment, this Lease shall continue in full force and effect, and in addition to any other rights and remedies Landlord may have, Landlord shall have all of the rights and remedies of a landlord provided by Section 1951.4 of the California Civil Code, including the right to recover rent as it falls due. Without any obligation to Tenant to do so, Landlord may also re-let the Premises as the agent of Tenant and for Tenant's account for such term, which may extend beyond the term of this Lease, and upon such other reasonable terms and conditions as Landlord may deem appropriate. Landlord may do all things reasonably necessary for such re-letting, including repair, remodeling and renovating of the Premises, and Tenant shall reimburse Landlord on demand for all reasonable costs incurred by Landlord in connection therewith. In the event Landlord re-lets the Premises, Landlord shall apply any sums received upon such re-letting in the following order of priority: (1) to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord, (2) the payment of all reasonable legal expenses and other related costs incurred by Landlord following Tenant's default, (3) to the payment of all costs incurred by Landlord in restoring the Premises to good order and repair, or in remodeling, renovating or otherwise preparing the Premises for reletting, (4) to the payment of all costs (including, without limitation, any brokerage commissions) incurred by Landlord in reletting the Premises, (5) to the payment of rent due and unpaid hereunder, and (6) the balance, if any, to the payment of future rent as the same may become due hereunder. Notwithstanding any determination by Landlord not to elect to terminate this Lease, Landlord may at any time elect to terminate this Lease for any previous breach or default hereunder by Tenant which remains uncured or for any subsequent breach or default.

GGG. LANDLORD'S REMEDIES CUMULATIVE.

All of Landlord's remedies under this Lease shall be in addition to all other remedies Landlord may have at law or in equity. Waiver by Landlord of any breach of any obligation by Tenant shall be effective only if it is in writing, and shall not be deemed a waiver of any other breach, or any subsequent breach of the same obligation. Landlord's acceptance of payment by Tenant shall not constitute a waiver of any breach by Tenant, and if the acceptance occurs after Landlord's notice to Tenant, or termination of the Lease or of Tenant's right to possession, the acceptance shall not affect such notice or termination. Acceptance of payment by Landlord after commencement of a legal proceeding or final judgment shall not affect such proceeding or judgment. Landlord may advance such monies and take such other actions for Tenant's account as reasonably may be required to cure or mitigate any default by Tenant. Tenant shall immediately reimburse Landlord for any such advance, and such sums shall bear interest at the default interest rate until paid.

HHH. WAIVER OF TRIAL BY JURY.

EACH PARTY WAIVES TRIAL BY JURY IN THE EVENT OF ANY LEGAL PROCEEDING BROUGHT BY THE OTHER IN CONNECTION WITH THIS LEASE. EACH PARTY SHALL BRING ANY ACTION AGAINST THE OTHER IN CONNECTION WITH THIS LEASE IN A FEDERAL OR STATE COURT LOCATED TN CALIFORNIA, CONSENTS TO THE JURISDICTION OF SUCH COURTS, AND WAIVES ANY RIGHT TO HAVE ANY PROCEEDING TRANSFERRED FROM SUCH COURTS ON THE GROUND OF IMPROPER VENUE OR INCONVENIENT FORUM. LANDLORD AND TENANT EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER IN CONNECTION WITH THIS LEASE OR THE PREMISES.

III. LITIGATION COSTS.

Tenant shall pay Landlord's reasonable attorneys' fees and other costs in enforcing this Lease, whether or not suit is filed.

SURRENDER

Upon the expiration or earlier termination of this Lease for any reason, Tenant shall surrender the Premises to Landlord in its condition existing as of the Commencement Date, normal wear and tear and damage by fire or other casualty excepted, with all interior walls repaired and repainted if marked or damaged, all carpets shampooed and cleaned, all broken, marred or nonconforming acoustical ceiling tiles replaced, all windows washed, the HVAC, plumbing and electrical systems and lighting in good order and repair, including replacement of any burned out or broken light bulb or ballasts, and all floors cleaned and waxed, all to the reasonable satisfaction of Landlord. Tenant shall remove from the Premises all Tenant's personal property and all of Tenant's alterations required to be removed pursuant to Section 6.E, and restore the Premises to its condition prior to their installation. If Tenant fails to remove any alterations and/or Tenant's personal property, and such failure continues after the termination of this Lease, Landlord may retain or dispose of such property and all rights of Tenant with respect to it shall cease, or Landlord may place all or any portion of such property in public storage for Tenant's account. Tenant shall be liable to Landlord for costs of removal of any such alterations and Tenant's personal property and storage and transportation costs of same, and the cost of repairing and restoring the Premises, together with interest at the Interest Rate from the date of expenditure by Landlord. If the Premises are not so surrendered at the termination of this Lease, Tenant shall indemnify Landlord against all loss or liability, including attorneys' fees and costs, resulting from delay by Tenant in so surrendering the Premises.

HOLDOVER

Tenant shall have no right to holdover possession of the Premises after the expiration or termination of this Lease without Landlord's prior written consent which Landlord may withhold in its sole and absolute discretion. If, however, Tenant retains possession of any part of the Premises after the Term, Tenant shall become a month-to-month tenant for the entire Premises upon all of the terms of this Lease as might be applicable to such month-to-month tenancy, except that Tenant shall pay all of the Base Rent, Operating Cost Share Rent and Tax Share Rent at one hundred fifty (150%) percent of the rate in effect immediately prior to such holdover, computed on a monthly basis for each full or partial month Tenant remains in possession. Tenant shall also pay Landlord all of Landlord's direct and consequential damages resulting from Tenant's holdover. No acceptance of Rent or other payments by Landlord under these holdover provisions shall operate as a waiver of Landlord's right to regain possession or any other of Landlord's remedies.

SUBORDINATION TO GROUND LEASES AND MORTGAGES

JJJ. SUBORDINATION.

This Lease shall be subordinate to any present or future ground lease or mortgage respecting the Project, and any amendments to such ground lease or mortgage, at the election of the ground lessor or mortgagee as the case may be, effected by notice to Tenant in the manner provided in this Lease. The subordination shall be effective upon such notice, but at the request of Landlord or ground lessor or mortgagee, Tenant shall within ten (10) days of the request, execute and deliver to the requesting party any reasonable documents provided to evidence the subordination. At any time that the Project is made subject to any ground lease or mortgage, Landlord shall use commercially reasonable efforts to cause the mortgagee or ground lessor to deliver to Tenant a non-disturbance agreement reasonably acceptable to Tenant, providing that so long as Tenant is not in default under the Lease after the expiration of any applicable notice and cure periods, Tenant may remain in possession of the Premises under the terms of this Lease, even if the ground lessor should terminate the ground lease or if the mortgagee or its successor should acquire Landlord's title to the Project.

KKK. TERMINATION OF GROUND LEASE OR FORECLOSURE OF MORTGAGE.

If any ground lease is terminated or mortgage foreclosed or deed in lieu of foreclosure given and the ground lessor, mortgagee, or purchaser at a foreclosure sale shall thereby become the owner of the Project, Tenant shall attorn to such ground lessor or mortgagee or purchaser without any deduction or setoff by Tenant, and this Lease shall continue in effect as, a direct lease between Tenant and such ground lessor, mortgagee or purchaser. The ground lessor or mortgagee or purchaser shall be liable as Landlord only during the time such ground lessor or mortgagee or purchaser is the owner of the Project. At the request of Landlord, ground lessor or mortgagee, Tenant shall execute and deliver within ten (10) days of the request any document furnished by the requesting party to evidence Tenant's agreement to attorn.

LLL. DEFINITIONS.

As used in this Section 18.C, "mortgage" shall include "trust deed" and "deed of trust", "mortgagee" shall include "'trustee," "beneficiary" and the mortgagee of any ground lessee, and "ground lessor", "mortgagee", and "purchaser at a foreclosure sale" shall include, in each case, all of its successors, and assigns, however remote.

ASSIGNMENT AND SUBLEASE

MMM. IN GENERAL.

Tenant shall not, without the prior consent of Landlord in each case, (i) make or allow any assignment or transfer, by operation of law or otherwise, of any part of Tenant's interest in this Lease, (ii) grant or allow any lien or encumbrance, by operation of law or otherwise, upon any part of Tenant's interest in this Lease, (iii) sublet any part of the Premises, or (iv) permit anyone other than Tenant and its employees to occupy any part of the Premises. Tenant shall remain primarily liable for all of its obligations under this Lease, notwithstanding any assignment or transfer. No consent granted by Landlord shall be deemed to be a consent to any subsequent assignment or transfer, lien or encumbrance, sublease or occupancy. Tenant shall pay all of Landlord's attorneys' fees and other expenses incurred in connection with any consent requested by Tenant or in reviewing any proposed assignment or subletting. Any assignment or transfer, grant of lien or encumbrance, or sublease or occupancy without Landlord's prior written consent shall be void. If Tenant shall assign this Lease or sublet the Premises in its entirety any rights of Tenant to renew this Lease, extend the Term or to lease additional space in the Project shall be extinguished thereby and will not be transferred to the assignee or subtenant, all such rights being personal to the Tenant named herein.

"Assign" or **"Assignment"** As used in this paragraph, the term "assign" or "assignment" shall include the following:

(1) **If Tenant is a corporation:** (1) any dissolution, merger, consolidation, or other reorganization of Tenant; (2) a sale of more than 50% of the value of the assets of Tenant; or (3) if Tenant is a corporation with fewer than 35 shareholders, a sale or other transfer of more than 50%, at any one time or in the aggregate, of such party's capital stock of Tenant.

NNN. LANDLORD'S CONSENT.

Landlord will not unreasonably withhold its consent to any proposed assignment or subletting. It shall be reasonable for Landlord to withhold its consent to any assignment or sublease if (i) Tenant is in default under this Lease, (ii) the proposed assignee or sublessee is a tenant in the Project or an affiliate of such a tenant or a party that Landlord has identified as a prospective tenant in the Project, (iii) the financial responsibility, nature of business, and character of the proposed assignee or subtenant are not all reasonably satisfactory to Landlord, (iv) in the reasonable judgment of Landlord the purpose for which the assignee or subtenant intends to use the Premises (or a portion thereof) is not in keeping with Landlord's standards for the Building or are in violation of the terms of this Lease or any other leases in the Project, (v) the proposed assignee or subtenant is a government entity, or (vi) the proposed sublease is for less than the entire Premises or for less than the remaining Tenancy of the Lease. The foregoing shall not exclude any other reasonable basis for Landlord to withhold its consent.

OOO. PROCEDURE.

Tenant shall notify Landlord of any proposed assignment or sublease at least thirty (30) days prior to its proposed effective date. The notice shall include the name and address of the proposed assignee or subtenant, its corporate affiliates in the case of a corporation and its partners in a case of a partnership, an execution copy of the proposed assignment or sublease, and sufficient information to permit Landlord to determine the financial responsibility and character of the proposed assignee or subtenant. As a condition to any effective assignment of this Lease, the assignee shall execute and deliver in form satisfactory to Landlord at least fifteen (15) days prior to the effective date of the assignment, an assumption of all of the obligations of Tenant under this Lease. As a condition to any effective sublease, subtenant shall execute and deliver in a form satisfactory to Landlord at least fifteen (15) days prior to the effective date of the sublease, an agreement to comply with all of Tenant's obligations under this Lease, and at Landlord's option, an agreement (except for the economic obligations which subtenant will undertake directly to Tenant) to attorn to Landlord under the terms of the sublease in the event this Lease terminates before the sublease expires.

PPP. EXCESS PAYMENTS.

If Tenant shall assign this Lease or sublet any part of the Premises for consideration in excess of the prorata portion of Rent applicable to the space subject to the assignment or sublet, then Tenant shall pay to Landlord as Additional Rent, seventy-five (75%) percent of any such excess immediately upon receipt; provided that prior to sharing such portion of excess rent with Landlord, Tenant shall be first entitled to reimburse itself for all reasonable leasing commissions, attorneys' fees and tenant improvements costs which were specifically and reasonably incurred in connection with such assignment of this Lease or sublet of the Premises.

QQQ. RECAPTURE.

For any proposed sublease which would sublet a portion of the Premises for the remainder of the Term, or assignment which would assign this Lease for the remainder of the Term, Landlord may, by giving written notice to Tenant within thirty (30) days after receipt of Tenant's notice of assignment or subletting, terminate this Lease with respect to the space described in Tenant's notice, as of the effective date of the proposed assignment or sublease and all obligations under this Lease as to such space shall expire except as to any obligations that expressly survive any termination of this Lease.

RRR. EFFECTIVENESS OF CONSENT.

Provided Landlord has consented to such assignment or subletting, Tenant shall be free to assign this Lease or sublet the Premises, subject to the following conditions: (1) at the time of the transfer, Tenant is not in default under the Lease or would not be in default under the Lease but for the pendency of any grace or cure period; (2) the assignment or subletting shall be on the same terms set forth in the notice given by Tenant to Landlord; (3) assignment or sublease shall be valid and no sublessee shall take possession of the Premises until an executed counterpart of the assignment or sublease has been delivered to Landlord; and no assignee or sublessee shall have a right further to sublet.

SSS. TENANT'S WAIVER.

Tenant shall not be entitled to, and Tenant hereby waives any right it may have to make any claim for, money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim or defense) based upon any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed its consent or approval to a proposed assignment or subletting or as provided for herein. Tenant's sole remedy shall be an action or proceeding to enforce any provision hereof, or for specific performance, injunction or declaratory judgment. Tenant acknowledges that Tenant's rights hereunder satisfy the conditions set forth in Section 1951.4 of the California Civil Code with respect to the availability to Landlord of certain remedies for a default by Tenant under this Lease, and which provides, in part: "The lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue the lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations)."

TTT. CONTINUING LIABILITY OF TENANT.

Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rental and to perform all other obligations to be performed by Tenant hereunder. The acceptance of rental by Landlord from another person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee or successor. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto, and such action shall not relieve Tenant of liability under this Lease.

CONVEYANCE BY LANDLORD

If Landlord shall at any time transfer its interest in the Project or this Lease, Landlord shall be released of any obligations occurring after such transfer, except the obligation to return to Tenant any security deposit not delivered to its transferee, and Tenant shall look solely to Landlord's successors for performance of such obligations. This Lease shall not be affected by any such transfer.

ESTOPPEL CERTIFICATE

Each party shall, within ten (10) business days of receiving a request from the other party, execute, acknowledge in recordable form, and deliver to the other party or its designee a certificate stating, subject to a specific statement of any applicable exceptions, that the Lease as amended to date is in full force and effect, that the Tenant is paying Rent and other charges on a current basis, and that to the best of the knowledge of the certifying party, the other party has committed no uncured defaults and has no offsets or claims. The certifying party may also be required to state the date of commencement of payment of Rent, the Commencement Date, the Expiration Date, the Base Rent, the current Operating Cost Share Rent and Tax Share Rent estimates, the status of any improvements required to be completed by Landlord, the amount of any security deposit, and such other matters as may be reasonably requested. Failure to deliver such statement within the time required shall be conclusive evidence against the non-certifying party that this Lease, with any amendments identified by the requesting party, is in full force and effect, that there are no uncured defaults by the requesting party, that not more than one month's Rent has been paid in advance, that the non certifying party has not paid any security deposit, and that the non-certifying party has no claims or offsets against the requesting party.

LEASE DEPOSIT

Tenant shall deposit with Landlord on the date Tenant executes and delivers this Lease to Landlord, the cash sums set forth in the Schedule for both Prepaid Rent and Security Deposit (collectively, the "Lease Deposit"). The Prepaid Rent shall be applied by Landlord against the first full month's Base Rent payment obligation hereunder. The Security Deposit shall be held by Landlord as security for the performance of all of its obligations in the amount set forth on the Schedule. If Tenant is in default under this Lease more than two (2) times within any Lease Year, irrespective of whether such default is cured, then, without limiting Landlord's other rights or remedies available under this Lease, at law or in equity, the Security Deposit shall automatically be increased by an amount equal to three (3) times the original Security Deposit. If Tenant defaults under this Lease, Landlord may apply all or any part of the Lease Deposit for the payment of any Rent or other sum in default, the repair of any damage to the Premises caused by Tenant or the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default to the full extent permitted by law. Tenant hereby waives any restriction on the use or application of the Security Deposit by Landlord as set forth in California Civil Code Section 1950.7. To the extent any portion of the Security Deposit is used, Tenant shall within five (5) days after demand from Landlord restore the Security Deposit to its full amount. No trust relationship is created herein between Landlord and Tenant with respect to the security deposit. Landlord may keep the Security Deposit in its general funds and shall not be required to pay interest to Tenant on the deposit amount. If Tenant shall perform all of its obligations under this Lease and return the Premises to Landlord at the end of the Term, Landlord shall return all of the remaining Security Deposit to Tenant within thirty (30) days after the end of the Term provided, however, that Landlord may retain the Security Deposit as security for the payment of any adjustment in rent or additional rent following an expiration or termination of the Lease, and, upon such adjustment apply the retained Security Deposit against the amount due Landlord. The Security Deposit shall not serve as an advance payment of Rent or a measure of Landlord's damages for any default under this Lease. If Landlord transfers its interest in the Project or this Lease, Landlord may transfer the Security Deposit to its transferee. Upon such transfer, Landlord shall have no further obligation to return the Security Deposit to Tenant, and Tenant's right to the return of the Security Deposit shall apply solely against Landlord's transferee.

FORCE MAJEURE

Landlord shall not be in default under this Lease to the extent Landlord is unable to perform any of its obligations on account of any prevention, delay, stoppage due to strikes, lockouts, inclement weather, labor disputes, inability to obtain labor materials, fuels, energy or reasonable substitutes therefor, governmental restrictions, regulations: controls, actions or inaction, civil commotion, fire or other acts of God, national emergency, or any other cause of any kind beyond the reasonable control of Landlord (except financial inability) (collectively "Force Majeure").

TENANT'S PERSONAL PROPERTY AND FIXTURES

In addition to any statutory lien granted to lessors under California law, Landlord shall have, at all times, and Tenant hereby grants and agrees to grant Landlord, a valid security interest to secure payment of all rental and all other sums payable under this Lease upon all goods, equipment, fixtures, furniture, improvements, inventory, chattel, and other personal property of Tenant presently, or which may hereafter be, situated within the Premises or used in connection therewith wherever located, whether now owned or hereafter acquired, and all proceeds therefrom, including, without limitation, insurance proceeds (collectively "Personal Property"). Landlord may, in addition to any other remedies provided elsewhere herein or allowed by law, all of which are cumulative, enter upon the Premises and take possession of any and all Personal Property of Tenant situated within the Premises, without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale the Landlord or its assigns may purchase such Personal Property unless otherwise prohibited by law. Landlord shall only be required to give notice if required by law. The requirement of notice shall be met if such notice is given in the manner prescribed in this Lease at least five (5) days before the time of sale. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding and selling of the Personal Property (including, without limitation, reasonable attorneys' fees and legal expenses) shall be applied as a credit against the indebtedness secured by the security interest granted in this Section. Any surplus shall be paid to Tenant or as otherwise required by law, and Tenant shall pay any deficiencies forthwith. Contemporaneous with the execution of this Lease, and at any other time during the Lease Term if requested by Landlord, Tenant shall execute and deliver to Landlord, uniform commercial code financing statements (UCC-1) in sufficient form so that when properly filed, the security interest hereby given shall thereupon be perfected. If requested hereafter by Landlord, Tenant shall also execute and deliver to Landlord uniform commercial code financing statement change instruments in sufficient form to reflect any proper amendment or modification in or extension of the aforesaid contract lien and security interest hereby granted. Landlord shall, in addition to all of its rights hereunder, also have all of the rights and remedies of a secured party under the California Commercial Code.

NOTICES

All notices, consents, approvals and similar communications to be given by one party to the other under this Lease, shall be given in writing, mailed or personally delivered as follows:

To LANDLORD as follows:	SEAGATE TELEGRAPH ASSOCIATES, LLC c/o SEAGATE PROPERTIES, INC. 980 Fifth Avenue San Rafael, CA 94901 Attention: Property Manager

or to such other person at such other address as Landlord may designate by notice to Tenant.

To TENANT as follows:	NILE THERAPEUTICS, A DELAWARE CORPORATION 689 Fifth Avenue 14th Floor New York, NY 10022 Attention: Allan Gordon/Daron Evans
With a copy to:	NILE THERAPEUTICS, A DELAWARE CORPORATION 2850 Telegraph Avenue; Suite 310 Berkeley, CA 94704 Attention: Allan Gordon/Daron Evans

or to such other person at such other address as Tenant may designate by notice to Landlord. Mailed notices shall be sent by United States certified or registered mail, or by a reputable national overnight courier service, postage prepaid. Mailed notices shall be deemed to have been given on the earlier of actual delivery or three (3) business days after posting in the United States Mail in the case of registered or certified mail, and one business day in the case of overnight courier.

QUIET POSSESSION

So long as Tenant shall perform all of its obligations under this Lease, Tenant shall enjoy peaceful and quiet possession of the Premises against any party claiming through the Landlord, subject to the terms of this Lease.

REAL ESTATE BROKER

Tenant represents to Landlord that Tenant has not dealt with any real estate broker with respect to this Lease except for any brokers) listed in the Schedule, and no other broker is in any way entitled to any broker's fee or other payment in connection with this Lease. Tenant shall indemnify and defend Landlord against any claims by any other broker or third party for any payment of any kind in connection with this Lease.

MISCELLANEOUS

UUU. SUCCESSORS AND ASSIGNS.

Subject to the limits on Tenant's assignment contained in Section 19, the provisions of this Lease shall be binding upon and inure to the benefit of all successors and assigns of Landlord and Tenant.

VVV. DATE PAYMENTS ARE DUE.

Except for payments to be made by Tenant under this Lease which are due upon demand, Tenant shall pay to Landlord any amount for which Landlord renders a statement of account within fifteen (15) days of Tenant's receipt of Landlord's statement.

Meaning of **"Landlord"**, **"Re-Entry", "Including"** and **"Affiliate"**

The term "Landlord" means only the owner of the Project and the lessor's interest in this Lease from time to time. The words "re-entry" and "re-enter" are not restricted to their technical legal meaning. The words "including" and similar words shall mean "without limitation." The word "affiliate" shall mean a person or entity controlling, controlled by or under common control with the applicable entity. "Control" shall mean the power directly or indirectly, by contract or otherwise, to direct the management and policies of the applicable entity.

WWW. TIME OF THE ESSENCE

Time is of the essence of each provision of this Lease.

XXX. NO OPTION.

This document shall not be effective for any purpose until it has been executed and delivered by both parties; execution and delivery by one party shall not create any option or other right in the other party.

YYY. SEVERABILITY.

The unenforceability of any provision of this Lease shall not affect any other provision.

ZZZ. GOVERNING LAW.

This Lease shall be governed in all respects by the laws of the state in which the Project is located, without regard to the principles of conflicts of laws.

AAAA. LEASE MODIFICATION.

Tenant agrees to clarify this Lease in any way requested by a mortgagee which does not cause increased expense to Tenant or otherwise adversely affect Tenant's interests under this Lease.

BBBB. NO ORAL MODIFICATION.

No modification of this Lease shall be effective unless it is a written modification signed by both parties.

CCCC. LANDLORD'S RIGHT TO CURE.

If Landlord breaches any of its obligations under this Lease, Tenant shall notify Landlord in writing and shall take no action respecting such breach so long as Landlord promptly begins to cure the breach and diligently pursues such cure to its completion. Landlord may cure any default by Tenant; any expenses incurred shall become Additional Rent due from Tenant on demand by Landlord.

DDDD. CAPTIONS.

The captions used in this Lease shall have no effect on the construction of this Lease.

EEEE. AUTHORITY.

Landlord and Tenant each represents to the other that it has full power and authority to execute and perform this Lease.

FFFF. LANDLORD'S ENFORCEMENT OF REMEDIES.

Landlord may enforce any of its remedies under this Lease either in its own name or through an agent.

GGGG. ENTIRE AGREEMENT.

This Lease, together with all Appendices, constitutes the entire agreement between the parties. No representations or agreements of any kind have been made by either parry which are not contained in this Lease.

HHHH. LANDLORD'S TITLE.

Landlord's title shall always be paramount to the interest of the Tenant, and nothing in this Lease shall empower Tenant to do anything which might in any way impair Landlord's title.

IIII. LIGHT AND AIR RIGHTS.

Landlord does not grant in this Lease any rights to light and air in connection with Project. Landlord reserves to itself, the Land, the Building below the improved floor of each floor of the Premises, the Building above the ceiling of each floor of the Premises, the exterior of the Premises and the areas on the same floor outside the Premises, along with the areas within the Premises required for the installation and repair of utility lines and other items required to serve other tenants of the Building.

JJJJ. SINGULAR AND PLURAL.

Wherever appropriate in this Lease, a singular term shall be construed to mean the plural where necessary, and a plural term the singular. For example, if at any time two parties shall constitute Landlord or Tenant, then the relevant term shall refer to both parties together.

KKKK. NO RECORDING BY TENANT.

Tenant shall not record in any public records any memorandum or any portion of this Lease.

LLLL. EXCLUSIVITY.

Landlord does not grant to Tenant in this Lease any exclusive right except the right to occupy its Premises.

MMMM. NO CONSTRUCTION AGAINST DRAFTING PARTY.

The rule of construction that ambiguities are resolved against the drafting party shall not apply to this Lease.

NNNN. SURVIVAL.

All obligations of Landlord and Tenant under this Lease shall survive the termination of this Lease.

OOOO. RENT NOT BASED ON INCOME.

No Rent or other payment in respect of the Premises shall be based in any way upon net income or profits from the Premises. Tenant may not enter into or permit any sublease or license or other agreement in connection with the Premises which provides for a rental or other payment based on net income or profit.

PPPP. BUILDING MANAGER AND SERVICE PROVIDERS.

Landlord may perform any of its obligations under this Lease through its employees or third parties hired by the Landlord.

QQQQ. LATE CHARGE AND INTEREST ON LATE PAYMENTS.

Without limiting the provisions of Section 14.A, if Tenant fails to pay any installment of Rent or other charge to be paid by Tenant pursuant to this Lease within five (5) business days after the same becomes due and payable, then Tenant shall pay a late charge equal to the greater of five percent (5%) of the amount of such payment or $250. In addition, interest shall be paid by Tenant to Landlord on any late payments of Rent from the date due until paid at the rate provided in Section 2.D (2). Such late charge and interest shall constitute Additional Rent due and payable by Tenant to Landlord upon the date of payment of the delinquent payment referenced above.

RRRR. TENANT'S FINANCIAL STATEMENTS.

Within ten (10) days after Landlord's written request therefor, Tenant shall deliver to Landlord the current financial statements of Tenant, and financial statements of the two (2) years prior to the current financial statements year, with an opinion of a certified public accountant, including a balance sheet and profit and loss statement for the most recent prior year, all prepared in accordance with generally accepted accounting principles consistently applied.

SSSS. ATTORNEY'S FEES.

If either party defaults in the performance of any terms, covenants, agreements or conditions contained in this Lease and Landlord places enforcement of this Lease or the collection of rent due or to become due hereunder, or recovery of possession of the Premises in the hands of any attorney, or either party files suit upon the same, the non prevailing parry agrees to pay the prevailing party's reasonable attorneys' fees and expenses.

UNRELATED BUSINESS INCOME

If Landlord is advised by its counsel at any time that any part of the payments by Tenant to Landlord under this Lease may be characterized as unrelated business income under the United States Internal Revenue Code and its regulations, then Tenant shall enter into any amendment proposed by Landlord to avoid such income, so long as the amendment does not require Tenant to make more payments or accept fewer services from Landlord, than this Lease provides.

HAZARDOUS SUBSTANCES

Tenant shall not cause or permit any Hazardous Substances to be brought upon, produced, stored, used, discharged or disposed of in or near the Project unless Landlord has consented to such storage or use in its sole discretion. Any handling, transportation, storage, treatment, disposal or use of any Hazardous Substances in or about the Project by Tenant, its agents, employees, contractors or invitees shall strictly comply with all applicable Governmental Requirements. Tenant shall indemnify, defend and hold Landlord harmless from and against any liabilities, losses, claims, damages, penalties, fines, attorneys' fees and court costs, remediation costs, investigation costs and any other expenses which result from or arise out of the use, storage, treatment, transportation, release, or disposal of any Hazardous Substances on or about the Project by Tenant, its agents, employees, contractors or invitees. If any lender or governmental agency shall require testing for Hazardous Substances in the Premises, Tenant shall pay for such testing if the requirement for the testing arises from the Tenant's use or activities on or around the Project.

TTTT. HAZARDOUS SUBSTANCES.

"Hazardous Substances" means any hazardous or toxic substances, materials or waste which are or become regulated by any local government authority, the State of California or the United States government, including those substances described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control), defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), defined as a "hazardous material," "hazardous substance" or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), petroleum, or any fraction thereof, methyl tertiary butyl ether (MTBE), asbestos, polychlorinated biphenyls, any other applicable federal, state or local law, and the regulations adopted under these laws.

LANDLORD'S LEASE UNDERTAKINGS

Notwithstanding anything to the contrary contained in this Lease or in any exhibits, Riders or addenda hereto attached (collectively the "Lease Documents"), it is expressly understood and agreed by and between the parties hereto that: (a) the recourse of Tenant or its successors or assigns against Landlord with respect to the alleged breach by or on the part of Landlord of any representation, warranty, covenant, undertaking or agreement contained in any of the Lease Documents or otherwise arising out of Tenant's use of the Premises or the Building (collectively, "Landlord's Lease Undertaking") shall extend only to Landlord's interest in the real estate of which the Premises demised under the Lease Documents are a part ("Landlord's Real Estate") and not to any other assets of Landlord or its beneficiaries; and (b) no personal liability or personal responsibility of any sort with respect to any of Landlord's Lease Undertakings or any alleged breach thereof is assumed by, or shall at any time be asserted or enforceable against, Landlord, SEAGATE PROPERTIES, INC., or against any of their respective directors, officers, employees, agents, constituent partners, members, managers, beneficiaries, trustees or representatives. Tenant acknowledges that this Lease may be executed by certain officers of SEAGATE PROPERTIES, INC., not individually but solely on behalf of, and as the authorized nominee and agent for, Landlord, and Tenant and all persons dealing with Landlord waive any right to bring a cause of action against the individuals executing this Lease on behalf of Landlord and must look solely to the Landlord's Real Estate for the enforcement of any claim against Landlord.

OFFER TO LEASE

The submission of this Lease to Tenant or its broker or other agent, does not constitute an offer to Tenant to lease the Premises. This Lease shall have no force and effect until (a) it is executed and delivered by Tenant to Landlord, and (b) it is fully reviewed, executed and delivered by Landlord to Tenant; provided, however, that upon execution of this Lease by Tenant and delivery to Landlord, such execution and delivery by Tenant shall, in consideration of the time and expense incurred by Landlord in reviewing the Lease and Tenant's credit, constitute an offer by Tenant to Lease the Premises upon the terms and conditions set forth herein (which offer to Lease shall be irrevocable for twenty (20) business days following the date of delivery).

RESERVATION OF RIGHTS

Landlord reserves the following rights exercisable without notice (except as otherwise expressly provided to the contrary in this Lease) and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for set-off or abatement of Rent: (a) to change the name or street address of the Building; (b) to install, affix and maintain all signs on the exterior and/or interior of the Building; (c) to designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items, and all internal lighting that may be visible from the exterior of the Premises and, notwithstanding the provisions of Section 9, the design, arrangement, style, color and general appearance of the portion of the Premises visible from the exterior, and contents thereof, including, without limitation, furniture, fixtures, art work, wall coverings, carpet and decorations, and all changes, additions and removals thereto, shall, at all times have the appearance of Premises having the same type of exposure and used for substantially the same purposes that are generally prevailing in comparable office buildings in the area; (d) to change the location of any other tenant, the arrangement, size, character, use or location of entrances or passageways, doors, doorways, corridors, elevators, escalators, stairs, landscaping, toilets or any other parts of the Building, or to change common area to tenant space and tenant space to common area; (e) to grant any party the exclusive right to conduct any business or render any service in the Building, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purposes permitted under this Lease; (f) to prohibit the placement of vending or dispensing machines of any kind in or about the Premises other than for use by Tenant's employees; (g) to prohibit the placement of video or other electronic games in the Premises; (h) to have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises according to the rules of the United States Post Office and to discontinue any mail chute business in the Building; (i) to close the Building after normal business hours, except that Tenant and its employees and invitees shall be entitled to admission at all times under such rules and regulations as Landlord prescribes for security purposes; (j) to install, operate and maintain security systems which monitor, by close circuit television or otherwise, all persons entering or exiting the Building; (k) to install and maintain pipes, ducts, conduits, wires and structural elements located in the Premises which serve other parts or other tenants of the Building; and (1) to retain at all times master keys or pass keys to the Premises. None of the foregoing shall result in any liability of Landlord to Tenant.

MODIFICATION AND FINANCING CONDITIONS

Landlord may obtain financing for the Building, portions thereof, and the operation thereof, secured by mortgages or deeds of trust encumbering the Building. If any mortgage lender should require, as a condition to such financing, or pursuant to rights of approval set forth in the mortgage or deed of trust encumbering the Building, any modification of the terms or conditions of this Lease, Tenant agrees to execute such modification or amendment, provided that, such modification or amendment (a) shall not increase the rental or Tenant's share of any costs additional to minimum rent, (b) shall not materially interfere with Tenant's use or occupancy of the Premises, and (c) shall not materially increase Tenant's obligation hereunder.

(This space intentionally left blank) (Signatures on next page)

IN WITNESS WHEREOF, the parties hereto have executed this Lease dated March 21, 2007, by and between **SEAGATE TELEGRAPH ASSOCIATES, LLC**, a California limited liability corporation, and NILE THERAPEUTICS, a Delaware corporation, for the above referenced and described Property located at 2850 Telegraph Avenue, Suite 310, Berkeley, California 94704.

LANDLORD:

SEAGATE TELEGRAPH ASSOCIATES, LLC,
a California limited liability corporation

BY: SEAGATE 2850 ASSOCIATES, LLC

ITS: GENERAL PARTNER

By:. /s/ John R. Conely

Name: John R. Conely

Its: Managing Member

Date: March 29, 2007

TENANT:

NILE THERAPEUTICS,
a Delaware corporation

By:. /s/ Allan Gordon

Name: Allan Gordon

Its: CEO

By: /s/ Daron Evans

Name: Daron Evans

Its: COO

Date: March 27, 2007

EXHIBIT A

SITE PLAN OF PREMISES

This Exhibit A is attached to and made a part of that certain Lease dated March 21, 2007, by and between SEAGATE TELEGRAPH ASSOCIATES, LLC, a California limited liability corporation, as Landlord, and NILE THERAPEUTICS, a Delaware corporation, as Tenant, in the Building commonly referred to as 2850 Telegraph Avenue, Berkeley, California 94704.

Insert Graphic

EXHIBIT B

RULES AND REGULATIONS

This Exhibit B is attached to and made a part of that certain Lease dated March 21, 2007, by and between SEAGATE TELEGRAPH ASSOCIATES, LLC, a California limited liability corporation, as Landlord, and NILE THERAPEUTICS, a Delaware corporation, as Tenant, in the Building commonly referred to 2850 Telegraph Avenue, Berkeley, California 94704.

1. Tenant shall not place anything, or allow anything to be placed near the glass of any window, door, partition or wall, which may, in Landlord's j udgment, appear unsightly from outside of the Project.

2. The Project directory, if any, shall be used by Landlord to display names and locations of tenants in the Project. No tenant shall use or make any changes to such directories without Landlord's prior written consent.

3. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Tenant or used by Tenant for any purposes other than for ingress to and egress from the Premises, unless Tenant is the sole occupant of the Building. Tenant shall lend its full cooperation to keep such areas free from all obstruction and in a clean and sightly condition and shall move all supplies, furniture and equipment as soon as received directly to the Premises and move all such items and waste being taken from the Premises (other than waste customarily removed by employees of the Building) directly to the shipping platform at or about the time arranged for removal therefrom. Neither Tenant nor any employee or invitee of Tenant shall go upon the roof of the Project.

4. The toilet rooms, urinals, wash bowls and other apparatuses shall not be used for any purposes other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and to the extent caused by Tenant or its employees or invitees, the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Tenant.

5. Tenant shall not cause any unnecessary janitorial labor or services by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness.

6. Tenant shall not install or operate any refrigerating, heating or air conditioning apparatus, or carry on any mechanical business without the prior written consent of Landlord; use the Premises for housing, lodging or sleeping purposes; or permit preparation or warming of food in the Premises (warming of coffee and individual meals with employees and guests excepted). Tenant shall not occupy or use the Premises or permit the Premises to be occupied or used for any purpose, act or thing which is in violation of any Governmental Requirement or which may be dangerous to persons or property.

7. Tenant shall not bring upon, use or keep in the Premises or the Project any kerosene, gasoline or inflammable or combustible fluid or material, or any other articles deemed hazardous to persons or property, or use any method of heating or air conditioning other than that supplied by Landlord.

8. Landlord shall have sole power to direct electricians as to where and how telephone and other wires are to be introduced. No boring or cutting for wires is to be allowed without the consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.

9. No additional locks shall be placed upon any doors, windows or transoms in or to the Premises. Tenant shall not change existing locks or the mechanism thereof. Upon termination of the lease, Tenant shall deliver to Landlord all keys and passes for offices, rooms, parking lot and toilet rooms which shall have been furnished Tenant.

In the event of the loss of keys so furnished, Tenant shall pay Landlord therefor. Tenant shall not make, or cause to be made, any such keys and shall order all such keys solely from Landlord and shall pay Landlord for any keys in addition to the two sets of keys originally furnished by Landlord for each lock.

10. Tenant shall not install linoleum, tile, carpet or other floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Landlord.

11. No furniture, packages, supplies, equipment or merchandise will be received in the Project or carried up or down in the freight elevator, except between such hours and in such freight elevator as shall be designated by Landlord. Tenant shall not take or permit to be taken in or out of other entrances of the Building, or take or permit on other elevators, any item normally taken in or out through the trucking concourse or service doors or in or on freight elevators.

12. Without the prior written consent of Landlord, Tenant shall not use the name of the Project or any picture of the Project in connection with, or in promoting or advertising the business of, Tenant, except Tenant may use the address of the Project as the address of its business.

13. Tenant shall cooperate fully with Landlord to assure the most effective operation of the Premises' or the Project's heating and air conditioning, and shall refrain from attempting to adjust any controls, other than room thermostats installed for Tenant's use. Tenant shall keep all corridor and exterior doors and windows closed, and during periods which outside temperatures exceed 90 degrees F dry bulb. Tenant shall close all blinds and turn off any unnecessary equipment.

14. Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage, which may arise from a cause other than Landlord's negligence, which includes keeping doors locked and other means of entry to the Premises closed and secured.

15. Peddlers, solicitors and beggars shall be reported to the office of the Project or as Landlord otherwise requests.

16. Tenant shall not advertise the business, profession or activities of Tenant conducted in the Project in any manner which violates the letter or spirit of any code of ethics adopted by any recognized association or organization pertaining to such business, profession or activities.

17. No bicycle (except in those areas which may be designated for bicycles by Landlord) or other vehicle and no animals or pets shall be allowed in the Premises, halls, freight docks, or any other parts of the Building except that blind persons may be accompanied by "seeing eye" dogs. Tenant shall not make or permit any noise, vibration or odor to emanate from the Premises, or do anything therein tending to create, or maintain, a nuisance, or do any act tending to injure the reputation of the Building.

18. Tenant acknowledges that Building security problems may occur which may require the employment of extreme security measures in the day-to-day operation of the project accordingly:

(a) Landlord may, at any time, or from time to time, or for regularly scheduled time periods, as deemed advisable by Landlord and/or its agents, in their sole discretion, require that persons entering or leaving the Project or the Property identify themselves to watchmen or other employees designated by Landlord, by registration, identification or otherwise.

(b) Tenant agrees that it and its employees will cooperate fully with Project employees in the implementation of any and all security procedures.

(c) Such security measures shall be the sole responsibility of Landlord, and Tenant shall have no liability for any action taken by Landlord in connection therewith, it being understood that Landlord is not required to provide any security procedures and shall have no liability for such security procedures or the lack thereof.

19. Tenant shall not do or permit the manufacture, sale, purchase, use or gift of any fermented, intoxicating or alcoholic beverages without obtaining written consent of Landlord.

20. Tenant shall not disturb the quiet enjoyment of any other tenant.

21. Landlord may retain a pass key to the Premises and be allowed admittance thereto at all times to enable its representatives to examine the Premises from time to time and to exhibit the same and Landlord may place and keep on the windows and doors of the Premises at any time signs advertising the Premises for Rent.

22. No equipment, mechanical ventilators, awnings, special shades or other forms of window covering shall be permitted either inside or outside the windows of the Premises without the prior written consent of Landlord, and then only at the expense and risk of Tenant, and they shall be of such shape, color, material, quality, design and make as may be approved by Landlord.

23. Tenant shall not during the term of this Lease canvas or solicit other tenants of the Building for any purpose.

24. Tenant shall not install or operate any phonograph, musical or sound-producing instrument or device, radio receiver or transmitter, TV receiver or transmitter, or similar device in the Building or Project Common Areas, nor install or operate any antenna, aerial, wires or other equipment inside or outside the Building, nor operate any electrical device from which may emanate electrical waves which may interfere with or impair radio or television broadcasting or reception from or in the Building or elsewhere, without in each instance the prior written approval of Landlord. The use thereof, if permitted, shall be subject to control by Landlord to the end that others shall not be disturbed.

25. Tenant shall promptly remove all rubbish and waste from the Premises.

26. Tenant shall not exhibit, sell or offer for sale, Rent or exchange in the Premises or at the Project any article, thing or service, except those ordinarily embraced within the use of the Premises specified in Section 7 of this Lease, without the prior written consent of Landlord.

27. If required by Landlord, Tenant shall list all furniture, equipment and similar articles Tenant desires to remove from the Premises or the Building and deliver a copy of such list to Landlord and procure a removal permit from Landlord (or the Project manager) authorizing Building employees to permit such articles to be removed.

28. Tenant shall not overload any floors in the Premises or any public corridors or elevators in the Building.

29. Tenant shall not do any painting in the Premises, or mark, paint, cut or drill into, drive nails or screws into, or in any way deface any part of the Premises or the Building, outside or inside, without the prior written consent of Landlord.

30. Whenever Landlord's consent, approval or satisfaction is required under these Rules, then unless otherwise stated, any such consent, approval or satisfaction must be obtained in advance, such consent or approval may be granted or withheld in Landlord's sole discretion, and Landlord's satisfaction shall be determined in its sole judgment.

31. Tenant and its employees shall cooperate in all fire drills conducted by Landlord in the Building.

Tenant Initials: _____

EXHIBIT C

TENANT IMPROVEMENT AGREEMENT AND WORK LETTER

This Tenant Improvement Agreement and Work Letter ("Work Letter") is executed simultaneously with that certain Office Lease, dated for reference purposes, March 21, 2007, (the "Lease") between NILE THERAPEUTICS, a Delaware corporation as "Tenant", and SEAGATE TELEGRAPH ASSOCIATES, LLC, a California limited liability corporation, as "Landlord", relating to demised premises ("Premises") at the building commonly known as 2850 Telegraph Avenue (the "Building"), which Premises are more fully identified in the Lease. Capitalized terms used herein, unless otherwise defined in this Work Letter, shall have the respective meanings ascribed to them in the Lease Letter.

For and in consideration of the agreement to lease the Premises and the mutual covenants contained herein and in the Lease, Landlord and Tenant hereby agree as follows:

1. Landlord, at its sole cost and expense (subject to the terms and provisions of Section 2 below) shall perform improvements to the Premises in accordance with the following work list (the "Work List") using Building standard methods, materials and finishes. The improvements to be performed in accordance with the Work List are hereinafter referred to as the "Landlord Work". Landlord shall enter into a direct contract for the Landlord Work with a general contractor selected by Landlord. In addition, Landlord shall have the right to select and/or approve of any subcontractors used in connection with the Landlord Work.

WORK LIST

1. Reuse existing Building standard carpet presently in-place within the Premises;

2. Provide and install demising wall between Suite 310 and Suite 300;

3. Provide interior full height walls to create six private perimeter offices as generally and approximately depicted on the Hook's Design Plan dated 3-20-07, attached as Exhibit C-l;

4. Provide and install six Building Standard interior office doors and frames with building standard hardware and passage sets, no locks.

5. Provide 18-inch glass side-lites at corner office and the adjacent those private offices along south window line.

6. Provide approximately 24 lineal feet of 48-inch high low wall partition in entry area.

7. Provide ring and string telephone outlets in each office, open office and Break Room.

8. Provide Building Standard electrical distribution per code minimum in each office, Open Office, and Break Room;

9. Provide six lineal foot of upper and lower cabinet with sink in Break Room;

10. Provide Building Standard paint, one coat, to match existing wall colors. Any color changes to be Tenant additional charge.

2. All other work and upgrades, subject to Landlord's approval, shall be at Tenant's sole cost and expense, plus any applicable state sales or use tax thereon, payable upon demand as Additional Rent. Tenant shall be responsible for any Tenant Delay in completion of the Premises resulting from any such other work and upgrades as requested or performed by Tenant.

3. Landlord's supervision or performance of any work for or on behalf of Tenant shall not be deemed to be a representation by Landlord that such work complies with applicable insurance requirements, building codes, ordinances, laws or regulations or that the improvements constructed will be adequate for Tenant's use.

4. Tenant acknowledges that the Landlord Work may be performed by Landlord in the Premises during Building Service Hours subsequent to the Commencement Date; Landlord and Tenant agree to cooperate with each other in order to enable the Landlord Work to be performed in a timely manner and with as little inconvenience to the operation of Tenant's business as is reasonably possible. Notwithstanding anything herein to the contrary, any delay in the completion of the Landlord Work or inconvenience suffered by Tenant during the performance of the Landlord Work shall not delay the Commencement Date; nor shall it subject Landlord to any liability for any loss or damage resulting therefrom or entitle Tenant to any credit, abatement or adjustment of Rent or other sums payable under the Lease.

5. This Exhibit shall not be deemed applicable to any additional space added to the Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Premises or any additions to the Premises in the event of a renewal or extension of the original Term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement to the Lease.

(*Signatures on next page*)

IN WITNESS WHEREOF, the parties hereto have executed this Tenant Improvement Agreement and Work Letter as of the date first above written.

LANDLORD:

SEAGATE TELEGRAPH ASSOCIATES, LLC,
a California limited liability corporation

BY: SEAGATE 2850 ASSOCIATES, LLC

ITS: GENERAL PARTNER

By:. /s/ John R. Conely

Name: John R. Conely

Its: Managing Member

Date: March 29, 2007

TENANT:

NILE THERAPEUTICS,
a Delaware corporation

By:. /s/ Allan Gordon

Name: Allan Gordon

Its: CEO

By: /s/ Daron Evans

Name: Daron Evans

Its: COO

Date: March 27, 2007

EXHIBIT C-1

SCOPE OF WORK/INITIAL PLANS

Landlord shall construct Tenant Improvements, which will be constructed in compliance with all applicable codes and regulations, using Building Standard materials and Building Standard finishes, consistent with that which is presently in the Premises, per the attached floorplan, which has been prepared by Landlord's architect, and which are mutually agreeable to Landlord and Tenant.

Insert Graphic

2850 TELEGRAPH AVE.
SUITE 314
BERKELEY, CA

Exhibit 10.9

Effective as of September 17, 2007

NILE THERAPEUTICS, INC.

Amended and Restated 2005 Stock Option Plan

1. Purpose. The purpose of the Amended and Restated 2005 Stock Option Plan (the "**Plan**") of Nile Therapeutics, Inc. (the "**Company**") is to increase shareholder value and to advance the interests of the Company by furnishing a variety of economic incentives ("**Incentives**") designed to attract, retain and motivate employees, directors and consultants. Incentives may consist of opportunities to purchase or receive shares of Common Stock, $0.001 par value, of the Company ("**Common Stock**"), monetary payments or both on terms determined under this Plan.

2. Certain Transactions. Pursuant to a merger agreement dated August 15, 2007 (the "**Merger Agreement**"), between SMI Products, Inc. ("**SMI**"), Nile Merger Sub., Inc., a Delaware corporation and wholly-owned subsidiary of SMI ("**Nile Merger Sub**"), and Nile Therapeutics, Inc. ("**Old Nile**"), on September 17, 2007, Nile Merger Sub merged with and into Old Nile, with Old Nile remaining as the surviving entity and a wholly-owned operating subsidiary of SMI. On September 17, 2007, Old Nile merged with and into SMI with SMI remaining as the surviving corporation to that merger (both mergers, together, the "**Mergers**"). Pursuant to the Mergers, and in accordance with Sections 13.6 of this Plan, each share of the common stock then subject to the Plan was substituted with 2.71 shares of common stock of SMI, par value $0.001 per share (the "**SMI Common Stock**"). In connection with the Mergers, SMI changed its corporate name to "Nile Therapeutics, Inc.", and this plan was assumed by the Company.

3. Administration.

3.1 The Plan shall be administered by a committee of the Board of Directors of the Company (the "**Committee**"). The Committee shall consist of not less than two directors of the Company who shall be appointed from time to time by the board of directors of the Company. Each member of the Committee shall be a "non-employee director" within the meaning of Rule 16b-3 of the Exchange Act of 1934, as amended (together with the rules and regulations promulgated thereunder, the "**Exchange Act**"), and an "outside director" as defined in Section 162(m) of the Internal Revenue Code of 1986, as amended (the "**Code**"). The Committee shall have complete authority to determine all provisions of all Incentives awarded under the Plan (as consistent with the terms of the Plan), to interpret the Plan, and to make any other determination which it believes necessary and advisable for the proper administration of the Plan. The Committee's decisions and matters relating to the Plan shall be final and conclusive on the Company and its participants. No member of the Committee will be liable for any action or determination made in good faith with respect to the Plan or any Incentives granted under the Plan. The Committee will also have the authority under the Plan to amend or modify the terms of any outstanding Incentives in any manner; provided, however, that the amended or modified terms are permitted by the Plan as then in effect and that any recipient on an Incentive adversely affected by such amended or modified terms has consented to such amendment or modification. No amendment or modification to an Incentive, however, whether pursuant to this Section 3 or any other provisions of the Plan, will be deemed to be a re-grant of such Incentive for purposes of this Plan. If at any time there is no Committee, then for purposes of the Plan the term "Committee" shall mean the Company's Board of Directors.

3.2 In the event of (i) any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, extraordinary dividend or divestiture (including a spin-off) or any other similar change in corporate structure or shares, (ii) any purchase, acquisition, sale or disposition of a significant amount of assets or a significant business, (iii) any change in accounting principles or practices, or (iv) any other similar change, in each case with respect to the Company or any other entity whose performance is relevant to the grant or vesting of an Incentive, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation) may, without the consent of any affected participant, amend or modify the vesting criteria of any outstanding Incentive that is based in whole or in part on the financial performance of the Company (or any subsidiary or division thereof) or such other entity so as equitably to reflect such event, with the desired result that the criteria for evaluating such financial performance of the Company or such other entity will be substantially the same (in the sole discretion of the Committee or the board of directors of the surviving corporation) following such event as prior to such event; provided, however, that the amended or modified terms are permitted by the Plan as then in effect.

4. Eligible Participants. Employees of the Company or its subsidiaries (including officers and employees of the Company or its subsidiaries), directors and consultants, advisors or other independent contractors who provide services to the Company or its subsidiaries (including members of the Company's scientific advisory board) shall become eligible to receive Incentives under the Plan when designated by the Committee. Participants may be designated individually or by groups or categories (for example, by pay grade) as the Committee deems appropriate. Participation by officers of the Company or its subsidiaries and any performance objectives relating to such officers must be approved by the Committee. Participation by others and any performance objectives relating to others may be approved by groups or categories (for example, by pay grade) and authority to designate participants who are not officers and to set or modify such targets may be delegated.

5. Types of Incentives. Incentives under the Plan may be granted in any one or a combination of the following forms: (a) incentive stock options and non-statutory stock options (Section 7); (b) stock appreciation rights ("**SARs**") (Section 8); (c) stock awards (Section 9); (d) restricted stock (Section 9); and (e) performance shares (Section 10).

6. Shares Subject to the Plan.

6.1. Number of Shares. Subject to adjustment as provided in Section 13.6, the number of shares of Common Stock which may be issued under the Plan shall not exceed 2,000,000 shares of Common Stock. Shares of Common Stock that are issued under the Plan or that are subject to outstanding Incentives will be applied to reduce the maximum number of shares of Common Stock remaining available for issuance under the Plan.

6.2. Cancellation. To the extent that cash in lieu of shares of Common Stock is delivered upon the exercise of an SAR pursuant to Section 8.4, the Company shall be deemed, for purposes of applying the limitation on the number of shares, to have issued the greater of the number of shares of Common Stock which it was entitled to issue upon such exercise or on the exercise of any related option. In the event that a stock option or SAR granted hereunder expires or is terminated or canceled unexercised or unvested as to any shares of Common Stock, such shares may again be issued under the Plan either pursuant to stock options, SARs or otherwise. In the event that shares of Common Stock are issued as restricted stock or pursuant to a stock award and thereafter are forfeited or reacquired by the Company pursuant to rights reserved upon issuance thereof, such forfeited and reacquired shares may again be issued under the Plan, either as restricted stock, pursuant to stock awards or otherwise. The Committee may also determine to cancel, and agree to the cancellation of, stock options in order to make a participant eligible for the grant of a stock option at a lower price than the option to be canceled.

7. Stock Options. A stock option is a right to purchase shares of Common Stock from the Company. The Committee may designate whether an option is to be considered an incentive stock option or a non-statutory stock option. To the extent that any incentive stock option granted under the Plan ceases for any reason to qualify as an "incentive stock option" for purposes of Section 422 of the Code, such incentive stock option will continue to be outstanding for purposes of the Plan but will thereafter be deemed to be a non-statutory stock option. Each stock option granted by the Committee under this Plan shall be subject to the following terms and conditions:

7.1. Price. The option price per share shall be determined by the Committee, subject to adjustment under Section 13.6.

7.2. Number. The number of shares of Common Stock subject to the option shall be determined by the Committee, subject to adjustment as provided in Section 13.6. The number of shares of Common Stock subject to a stock option shall be reduced in the same proportion that the holder thereof exercises a SAR if any SAR is granted in conjunction with or related to the stock option. No individual may receive options to purchase more than 1,000,000 shares in any year.

7.3. Duration and Time for Exercise. Subject to earlier termination as provided in Section 13.4, the term of each stock option shall be determined by the Committee but shall not exceed ten years and one day from the date of grant. Each stock option shall become exercisable at such time or times during its term as shall be determined by the Committee at the time of grant. The Committee may accelerate the exercisability of any stock option. Subject to the foregoing and with the approval of the Committee, all or any part of the shares of Common Stock with respect to which the right to purchase has accrued may be purchased by the Company at the time of such accrual or at any time or times thereafter during the term of the option.

7.4. Manner of Exercise. Subject to the conditions contained in this Plan and in the agreement with the recipient evidencing such option, a stock option may be exercised, in whole or in part, by giving written notice to the Company, specifying the number of shares of Common Stock to be purchased and accompanied by the full purchase price for such shares. The exercise price shall be payable (a) in United States dollars upon exercise of the option and may be paid by cash; uncertified or certified check; bank draft; (b) at the discretion of the Committee, by delivery of shares of Common Stock that are already owned by the participant in payment of all or any part of the exercise price, which shares shall be valued for this purpose at the Fair Market Value on the date such option is exercised; or (c) at the discretion of the Committee, by instructing the Company to withhold from the shares of Common Stock issuable upon exercise of the stock option shares of Common Stock in payment of all or any part of the exercise price and/or any related withholding tax obligations, which shares shall be valued for this purpose at the Fair Market Value or in such other manner as may be authorized from time to time by the Committee. The shares of Common Stock delivered by the participant pursuant to Section 7.4(b) must have been held by the participant for a period of not less than six months prior to the exercise of the option, unless otherwise determined by the Committee. Prior to the issuance of shares of Common Stock upon the exercise of a stock option, a participant shall have no rights as a shareholder. Except as otherwise provided in the Plan, no adjustment will be made for dividends or distributions with respect to such stock options as to which there is a record date preceding the date the participant becomes the holder of record of such shares, except as the Committee may determine in its discretion.

7.5. Incentive Stock Options. Notwithstanding anything in the Plan to the contrary, the following additional provisions shall apply to the grant of stock options which are intended to qualify as Incentive Stock Options (as such term is defined in Section 422 of the Code):

(a) The aggregate Fair Market Value (determined as of the time the option is granted) of the shares of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any participant during any calendar year (under the Plan and any other incentive stock option plans of the Company or any subsidiary or parent corporation of the Company) shall not exceed $100,000. The determination will be made by taking incentive stock options into account in the order in which they were granted.

(b) Any Incentive Stock Option certificate authorized under the Plan shall contain such other provisions as the Committee shall deem advisable, but shall in all events be consistent with and contain all provisions required in order to qualify the options as Incentive Stock Options.

(c) All Incentive Stock Options must be granted within ten years from the earlier of the date on which this Plan was adopted by board of directors or the date this Plan was approved by the Company’s shareholders.

(d) Unless sooner exercised, all Incentive Stock Options shall expire no later than 10 years after the date of grant. No Incentive Stock Option may be exercisable after ten (10) years from its date of grant (five (5) years from its date of grant if, at the time the Incentive Stock Option is granted, the Participant owns, directly or indirectly, more than 10% of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation of the Company).

(e) The exercise price for Incentive Stock Options shall be not less than 100% of the Fair Market Value of one share of Common Stock on the date of grant with respect to an Incentive Stock Option; provided that the exercise price shall be 110% of the Fair Market Value if, at the time the Incentive Stock Option is granted, the participant owns, directly or indirectly, more than 10% of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation of the Company.

8. Stock Appreciation Rights. An SAR is a right to receive, without payment to the Company, a number of shares of Common Stock, cash or any combination thereof, the amount of which is determined pursuant to the formula set forth in Section 8.4. An SAR may be granted (a) with respect to any stock option granted under this Plan, either concurrently with the grant of such stock option or at such later time as determined by the Committee (as to all or any portion of the shares of Common Stock subject to the stock option), or (b) alone, without reference to any related stock option. Each SAR granted by the Committee under this Plan shall be subject to the following terms and conditions:

8.1. Number; Exercise Price. Each SAR granted to any participant shall relate to such number of shares of Common Stock as shall be determined by the Committee, subject to adjustment as provided in Section 13.6. In the case of an SAR granted with respect to a stock option, the number of shares of Common Stock to which the SAR pertains shall be reduced in the same proportion that the holder of the option exercises the related stock option. The exercise price of an SAR will be determined by the Committee, in its discretion, at the date of grant but may not be less than 100% of the Fair Market Value of one share of Common Stock on the date of grant.

8.2. Duration. Subject to earlier termination as provided in Section 13.4, the term of each SAR shall be determined by the Committee but shall not exceed ten years and one day from the date of grant. Unless otherwise provided by the Committee, each SAR shall become exercisable at such time or times, to such extent and upon such conditions as the stock option, if any, to which it relates is exercisable. The Committee may in its discretion accelerate the exercisability of any SAR.

8.3. Exercise. An SAR may be exercised, in whole or in part, by giving written notice to the Company, specifying the number of SARs which the holder wishes to exercise. Upon receipt of such written notice, the Company shall, within 90 days thereafter, deliver to the exercising holder certificates for the shares of Common Stock or cash or both, as determined by the Committee, to which the holder is entitled pursuant to Section 8.4.

8.4. Payment. Subject to the right of the Committee to deliver cash in lieu of shares of Common Stock (which, as it pertains to officers and directors of the Company, shall comply with all requirements of the Exchange Act), the number of shares of Common Stock which shall be issuable upon the exercise of an SAR shall be determined by dividing:

(a) the number of shares of Common Stock as to which the SAR is exercised multiplied by the amount of the appreciation in such shares (for this purpose, the "appreciation" shall be the amount by which the Fair Market Value of the shares of Common Stock subject to the SAR on the exercise date exceeds (1) in the case of an SAR related to a stock option, the exercise price of the shares of Common Stock under the stock option or (2) in the case of an SAR granted alone, without reference to a related stock option, an amount which shall be determined by the Committee at the time of grant, subject to adjustment under Section 13.6); by

(b) the Fair Market Value of a share of Common Stock on the exercise date.

In lieu of issuing shares of Common Stock upon the exercise of a SAR, the Committee may elect to pay the holder of the SAR cash equal to the Fair Market Value on the exercise date of any or all of the shares which would otherwise be issuable. No fractional shares of Common Stock shall be issued upon the exercise of an SAR; instead, the holder of the SAR shall be entitled to receive a cash adjustment equal to the same fraction of the Fair Market Value of a share of Common Stock on the exercise date or to purchase the portion necessary to make a whole share at its Fair Market Value on the date of exercise.

9. Stock Awards and Restricted Stock. A stock award consists of the transfer by the Company to a participant of shares of Common Stock, without other payment therefor, as additional compensation for services to the Company. The participant receiving a stock award will have all voting, dividend, liquidation and other rights with respect to the shares of Common Stock issued to a participant as a stock award under this Section 9 upon the participant becoming the holder of record of such shares. A share of restricted stock consists of shares of Common Stock which are sold or transferred by the Company to a participant at a price determined by the Committee (which price shall be at least equal to the minimum price required by applicable law for the issuance of a share of Common Stock) and subject to restrictions on their sale or other transfer by the participant, which restrictions and conditions may be determined by the Committee as long as such restrictions and conditions are not inconsistent with the terms of the Plan. The transfer of Common Stock pursuant to stock awards and the transfer and sale of restricted stock shall be subject to the following terms and conditions:

9.1. Number of Shares. The number of shares to be transferred or sold by the Company to a participant pursuant to a stock award or as restricted stock shall be determined by the Committee.

9.2. Sale Price. The Committee shall determine the price, if any, at which shares of restricted stock shall be sold or granted to a participant, which may vary from time to time and among participants and which may be below the Fair Market Value of such shares of Common Stock at the date of sale.

9.3. Restrictions. All shares of restricted stock transferred or sold hereunder shall be subject to such restrictions as the Committee may determine, including, without limitation any or all of the following:

(a) a prohibition against the sale, transfer, pledge or other encumbrance of the shares of restricted stock, such prohibition to lapse at such time or times as the Committee shall determine (whether in annual or more frequent installments, at the time of the death, disability or retirement of the holder of such shares, or otherwise);

(b) a requirement that the holder of shares of restricted stock forfeit, or (in the case of shares sold to a participant) resell back to the Company at his or her cost, all or a part of such shares in the event of termination of his or her employment or consulting engagement during any period in which such shares are subject to restrictions; or

(c) such other conditions or restrictions as the Committee may deem advisable.

9.4. Escrow. In order to enforce the restrictions imposed by the Committee pursuant to Section 9.3, the participant receiving restricted stock shall enter into an agreement with the Company setting forth the conditions of the grant. Shares of restricted stock shall be registered in the name of the participant and deposited, together with a stock power endorsed in blank, with the Company. Each such certificate shall bear a legend in substantially the following form:

The transferability of this certificate and the shares of Common Stock represented by it are subject to the terms and conditions (including conditions of forfeiture) contained in the 2005 Stock Option Plan of Nile Therapeutics, Inc., (the "Company"), and an agreement entered into between the registered owner and the Company. A copy of the 2005 Stock Option Plan and the agreement is on file in the office of the secretary of the Company.

9.5. End of Restrictions. Subject to Section 13.5, at the end of any time period during which the shares of restricted stock are subject to forfeiture and restrictions on transfer, such shares will be delivered free of all restrictions to the participant or to the participant's legal representative, beneficiary or heir.

9.6. Shareholder. Subject to the terms and conditions of the Plan, each participant receiving restricted stock shall have all the rights of a shareholder with respect to shares of stock during any period in which such shares are subject to forfeiture and restrictions on transfer, including without limitation, the right to vote such shares. Dividends paid in cash or property other than Common Stock with respect to shares of restricted stock shall be paid to the participant currently. Unless the Committee determines otherwise in its sole discretion, any dividends or distributions (including regular quarterly cash dividends) paid with respect to shares of Common Stock subject to the restrictions set forth above will be subject to the same restrictions as the shares to which such dividends or distributions relate. In the event the Committee determines not to pay dividends or distributions currently, the Committee will determine in its sole discretion whether any interest will be paid on such dividends or distributions. In addition, the Committee in its sole discretion may require such dividends and distributions to be reinvested (and in such case the participant consents to such reinvestment) in shares of Common Stock that will be subject to the same restrictions as the shares to which such dividends or distributions relate.

10. Performance Shares. A performance share consists of an award which shall be paid in shares of Common Stock, as described below. The grant of a performance share shall be subject to such terms and conditions as the Committee deems appropriate, including the following:

10.1. Performance Objectives. Each performance share will be subject to performance objectives for the Company or one of its operating units to be achieved by the participant before the end of a specified period. The number of performance shares granted shall be determined by the Committee and may be subject to such terms and conditions, as the Committee shall determine. If the performance objectives are achieved, each participant will be paid in shares of Common Stock or cash as determined by the Committee. If such objectives are not met, each grant of performance shares may provide for lesser payments in accordance with formulas established in the award.

10.2. Not Shareholder. The grant of performance shares to a participant shall not create any rights in such participant as a shareholder of the Company, until the payment of shares of Common Stock with respect to an award.

10.3. No Adjustments. No adjustment shall be made in performance shares granted on account of cash dividends which may be paid or other rights which may be issued to the holders of Common Stock prior to the end of any period for which performance objectives were established.

10.4. Expiration of Performance Share. If any participant's employment or consulting engagement with the Company is terminated for any reason other than normal retirement, death or disability prior to the achievement of the participant's stated performance objectives, all the participant's rights on the performance shares shall expire and terminate unless otherwise determined by the Committee. In the event of termination of employment or consulting by reason of death, disability, or normal retirement, the Committee, in its own discretion may determine what portions, if any, of the performance shares should be paid to the participant.

11. Change of Control.

11.1 Change in Control. For purposes of this Section 11, a "**Change in Control**" of the Company will mean the following:

(a) the sale, lease, exchange or other transfer, directly or indirectly, of substantially all of the assets of the Company (in one transaction or in a series of related transactions) to a person or entity that is not controlled by the Company;

(b) the approval by the shareholders of the Company of any plan or proposal for the liquidation or dissolution of the Company;

(c) any person becomes after the effective date of the Plan the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of (i) 20% or more, but not 50% or more, of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors, unless the transaction resulting in such ownership has been approved in advance by the Continuing Directors (as defined below), or (ii) 50% or more of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuing Directors); provided that a traditional institution or venture capital financing transaction shall be excluded from this definition;

(d) a merger or consolidation to which the Company is a party if the shareholders of the Company immediately prior to effective date of such merger or consolidation have "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), immediately following the effective date of such merger or consolidation, of securities of the surviving corporation representing (i) 50% or more, but less than 80%, of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors, unless such merger or consolidation has been approved in advance by the Continuing Directors, or (ii) less than 50% of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuing Directors); or

(e) after the date the Company's securities are first sold in a registered public offering, the Continuing Directors cease for any reason to constitute at least a majority of the Board.

11.2 Continuing Directors. For purposes of this Section 11, "**Continuing Directors**" of the Company will mean any individuals who are members of the Board on the effective date of the Plan and any individual who subsequently becomes a member of the Board whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the Continuing Directors (either by specific vote or by approval of the Company's proxy statement in which such individual is named as a nominee for director without objection to such nomination).

11.3 Acceleration of Incentives. Without limiting the authority of the Committee under the Plan, if a Change in Control of the Company occurs whereby the acquiring entity or successor to the Company does not assume the Incentives or replace them with substantially equivalent incentive awards, then, unless otherwise provided by the Committee in its sole discretion in the agreement evidencing an Incentive at the time of grant, then as of the date of the Change of Control (a) all outstanding options and SARs will vest and will become immediately exercisable in full and will remain exercisable for the remainder of their terms, regardless of whether the participant to whom such options or SARs have been granted remains in the employ or service of the Company or any subsidiary of the Company or any acquiring entity or successor to the Company; (b) the restrictions on all shares of restricted stock awards shall lapse immediately; and (c) all performance shares shall be deemed to be met and payment made immediately.

11.4 Cash Payment for Options. If a Change in Control of the Company occurs, then the Committee, if approved by the Committee in its sole discretion either in an agreement evidencing an option at the time of grant or at any time after the grant of an option, and without the consent of any participant affected thereby, may determine that:

(a) some or all participants holding outstanding options will receive, with respect to some or all of the shares of Common Stock subject to such options, as of the effective date of any such Change in Control of the Company, cash in an amount equal to the excess of the Fair Market Value of such shares immediately prior to the effective date of such Change in Control of the Company over the exercise price per share of such options; and

(b) any options as to which, as of the effective date of any such Change in Control, the Fair Market Value of the shares of Common Stock subject to such options is less than or equal to the exercise price per share of such options, shall terminate as of the effective date of any such Change in Control.

If the Committee makes a determination as set forth in subparagraph (a) of this Section 11.4, then as of the effective date of any such Change in Control of the Company such options will terminate as to such shares and the participants formerly holding such options will only have the right to receive such cash payment(s). If the Committee makes a determination as set forth in subparagraph (b) of this Section 11.4, then as of the effective date of any such Change in Control of the Company such options will terminate, become void and expire as to all unexercised shares of Common Stock subject to such options on such date, and the participants formerly holding such options will have no further rights with respect to such options.

12. Per-Person Limitation on Options, SARs and Performance Shares. The number of shares of Common Stock with respect to which Options, SARs and performance shares may be granted under the Plan during any year to an individual participant shall not exceed 1,000,000 Shares, subject to adjustment as provided in Section 13.6.

13. General.

13.1. Effective Date. The Plan became effective upon approval by the Company's board of directors on August 10, 2005, and was amended and restated on September 17, 2007.

13.2. Duration. The Plan shall remain in effect until all Incentives granted under the Plan have either been satisfied by the issuance of shares of Common Stock or the payment of cash or been terminated under the terms of the Plan and all restrictions imposed on shares of Common Stock in connection with their issuance under the Plan have lapsed. No Incentives may be granted under the Plan after the tenth anniversary of the date the Plan is approved by the shareholders of the Company.

13.3. Non-transferability of Incentives. Except, in the event of the holder's death, by will or the laws of descent and distribution to the limited extent provided in the Plan or the Incentive, unless approved by the Committee, no stock option, SAR, restricted stock or performance award may be transferred, pledged or assigned by the holder thereof, either voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, and the Company shall not be required to recognize any attempted assignment of such rights by any participant. During a participant's lifetime, an Incentive may be exercised only by him or her or by his or her guardian or legal representative.

13.4. Effect of Termination or Death. In the event that a participant ceases to be an employee of or consultant to the Company, or the participants other service with the Company is terminated, for any reason, including death, any Incentives may be exercised or shall expire at such times as may be determined by the Committee in its sole discretion in the agreement evidencing an Incentive. Notwithstanding the other provisions of this Section 13.4, upon a participant's termination of employment or other service with the Company and all subsidiaries, the Committee may, in its sole discretion (which may be exercised at any time on or after the date of grant, including following such termination), cause options and SARs (or any part thereof) then held by such participant to become or continue to become exercisable and/or remain exercisable following such termination of employment or service and Restricted Stock Awards, Performance Shares and Stock Awards then held by such participant to vest and/or continue to vest or become free of transfer restrictions, as the case may be, following such termination of employment or service, in each case in the manner determined by the Committee; provided, however, that no Incentive may remain exercisable or continue to vest beyond its expiration date. Any Incentive Stock Option that remains unexercised more than one (1) year following termination of employment by reason of death or disability or more than three (3) months following termination for any reason other than death or disability will thereafter be deemed to be a Non-Statutory Stock Option.

13.5. Additional Conditions. Notwithstanding anything in this Plan to the contrary: (a) the Company may, if it shall determine it necessary or desirable for any reason, at the time of award of any Incentive or the issuance of any shares of Common Stock pursuant to any Incentive, require the recipient of the Incentive, as a condition to the receipt thereof or to the receipt of shares of Common Stock issued pursuant thereto, to deliver to the Company a written representation of present intention to acquire the Incentive or the shares of Common Stock issued pursuant thereto for his or her own account for investment and not for distribution; and (b) if at any time the Company further determines, in its sole discretion, that the listing, registration or qualification (or any updating of any such document) of any Incentive or the shares of Common Stock issuable pursuant thereto is necessary on any securities exchange or under any federal or state securities or blue sky law, or that the consent or approval of any governmental regulatory body is necessary or desirable as a condition of, or in connection with the award of any Incentive, the issuance of shares of Common Stock pursuant thereto, or the removal of any restrictions imposed on such shares, such Incentive shall not be awarded or such shares of Common Stock shall not be issued or such restrictions shall not be removed, as the case may be, in whole or in part, unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company. Notwithstanding any other provision of the Plan or any agreements entered into pursuant to the Plan, the Company will not be required to issue any shares of Common Stock under this Plan, and a participant may not sell, assign, transfer or otherwise dispose of shares of Common Stock issued pursuant to any Incentives granted under the Plan, unless (a) there is in effect with respect to such shares a registration statement under the Securities Act of 1933, as amended (the "**Securities Act**"), and any applicable state or foreign securities laws or an exemption from such registration under the Securities Act and applicable state or foreign securities laws, and (b) there has been obtained any other consent, approval or permit from any other regulatory body which the Committee, in its sole discretion, deems necessary or advisable. The Company may condition such issuance, sale or transfer upon the receipt of any representations or agreements from the parties involved, and the placement of any legends on certificates representing shares of Common Stock, as may be deemed necessary or advisable by the Company in order to comply with such securities law or other restrictions.

13.6. Adjustment. In the event of any merger, consolidation or reorganization of the Company with any other corporation or corporations, there shall be substituted for each of the shares of Common Stock then subject to the Plan, including shares subject to restrictions, options, or achievement of performance share objectives, the number and kind of shares of stock or other securities to which the holders of the shares of Common Stock will be entitled pursuant to the transaction. In the event of any recapitalization, reclassification, stock dividend, stock split, combination of shares or other similar change in the corporate structure of the Company or shares of the Company, the exercise price of an outstanding Incentive and the number of shares of Common Stock then subject to the Plan, including shares subject to restrictions, options or achievements of performance shares, shall be adjusted in proportion to the change in outstanding shares of Common Stock in order to prevent dilution or enlargement of the rights of the participants. In the event of any such adjustments, the purchase price of any option, the performance objectives of any Incentive, and the shares of Common Stock issuable pursuant to any Incentive shall be adjusted as and to the extent appropriate, in the discretion of the Committee, to provide participants with the same relative rights before and after such adjustment.

13.7. Incentive Plans and Agreements. Except in the case of stock awards or cash awards, the terms of each Incentive shall be stated in a plan or agreement approved by the Committee. The Committee may also determine to enter into agreements with holders of options to reclassify or convert certain outstanding options, within the terms of the Plan, as Incentive Stock Options or as non-statutory stock options and in order to eliminate SARs with respect to all or part of such options and any other previously issued options.

13.8. Withholding.

(a) The Company shall have the right to (i) withhold and deduct from any payments made under the Plan or from future wages of the participant (or from other amounts that may be due and owing to the participant from the Company or a subsidiary of the Company), or make other arrangements for the collection of, all legally required amounts necessary to satisfy any and all foreign, federal, state and local withholding and employment-related tax requirements attributable to an Incentive, or (ii) require the participant promptly to remit the amount of such withholding to the Company before taking any action, including issuing any shares of Common Stock, with respect to an Incentive. At any time when a participant is required to pay to the Company an amount required to be withheld under applicable income tax laws in connection with a distribution of Common Stock or upon exercise of an option or SAR, the participant may satisfy this obligation in whole or in part by electing (the "**Election**") to have the Company withhold from the distribution shares of Common Stock having a value up to the amount required to be withheld. The value of the shares to be withheld shall be based on the Fair Market Value of the Common Stock on the date that the amount of tax to be withheld shall be determined ("**Tax Date**").

(b) Each Election must be made prior to the Tax Date. The Committee may disapprove of any Election, may suspend or terminate the right to make Elections, or may provide with respect to any Incentive that the right to make Elections shall not apply to such Incentive. An Election is irrevocable.

(c) If a participant is an officer or director of the Company within the meaning of Section 16 of the Exchange Act, then an Election is subject to the following additional restrictions:

(1) No Election shall be effective for a Tax Date which occurs within six months of the grant or exercise of the award, except that this limitation shall not apply in the event death or disability of the participant occurs prior to the expiration of the six-month period.

(2) The Election must be made either six months prior to the Tax Date or must be made during a period beginning on the third business day following the date of release for publication of the Company's quarterly or annual summary statements of sales and earnings and ending on the twelfth business day following such date.

13.9. No Continued Employment, Engagement or Right to Corporate Assets. No participant under the Plan shall have any right, because of his or her participation, to continue in the employ of the Company for any period of time or to any right to continue his or her present or any other rate of compensation. Nothing contained in the Plan shall be construed as giving an employee, a consultant, such persons' beneficiaries or any other person any equity or interests of any kind in the assets of the Company or creating a trust of any kind or a fiduciary relationship of any kind between the Company and any such person.

13.10. Deferral Permitted. Payment of cash or distribution of any shares of Common Stock to which a participant is entitled under any Incentive shall be made as provided in the Incentive. Payment may be deferred at the option of the participant if provided in the Incentive.

13.11. Amendment of the Plan. The Board may amend, suspend or discontinue the Plan at any time; provided, however, that no amendments to the Plan will be effective without approval of the shareholders of the Company if shareholder approval of the amendment is then required pursuant to Section 422 of the Code or the rules of any stock exchange or Nasdaq or similar regulatory body. No termination, suspension or amendment of the Plan may adversely affect any outstanding Incentive without the consent of the affected participant; provided, however, that this sentence will not impair the right of the Committee to take whatever action it deems appropriate under Section 13.6 of the Plan.

13.12. Definition of Fair Market Value. For purposes of this Plan, the "Fair Market Value" of a share of Common Stock at a specified date shall, unless otherwise expressly provided in this Plan, be the amount which the Committee or the board of directors of the Company determines in good faith in the exercise of its reasonable discretion to be 100% of the fair market value of such a share as of the date in question; provided, however, that notwithstanding the foregoing, if such shares are listed on a U.S. securities exchange or are quoted on the Nasdaq National Market System or Nasdaq SmallCap Stock Market ("Nasdaq"), then Fair Market Value shall be determined by reference to the last sale price of a share of Common Stock on such U.S. securities exchange or Nasdaq on the applicable date. If such U.S. securities exchange or Nasdaq is closed for trading on such date, or if the Common Stock does not trade on such date, then the last sale price used shall be the one on the date the Common Stock last traded on such U.S. securities exchange or Nasdaq.

13.13 Breach of Confidentiality, Assignment of Inventions, or Non-Compete Agreements. Notwithstanding anything in the Plan to the contrary, in the event that a participant materially breaches the terms of any confidentiality, assignment of inventions, or non-compete agreement entered into with the Company or any subsidiary of the Company, whether such breach occurs before or after termination of such participant's employment or other service with the Company or any subsidiary, the Committee in its sole discretion may immediately terminate all rights of the participant under the Plan and any agreements evidencing an Incentive then held by the participant without notice of any kind.

13.13 Governing Law. The validity, construction, interpretation, administration and effect of the Plan and any rules, regulations and actions relating to the Plan will be governed by and construed exclusively in accordance with the laws of the State of Minnesota, notwithstanding the conflicts of laws principles of any jurisdictions.

13.14 Successors and Assigns. The Plan will be binding upon and inure to the benefit of the successors and permitted assigns of the Company and the participants in the Plan.

Exhibit 10.10

Nile Therapeutics, Inc.
Stock Option Agreement
(Non-Statutory)

This Stock Option Agreement is made and entered into as of the ___ day of _____, 200__, between _____ ("**Employee**") and Nile Therapeutics, Inc., a Delaware corporation (the "Company").

Background

A. Employee has been hired to serve as an employee of the Company or the Company desires to induce Employee to continue to serve the Company as an employee.

B. The Company has adopted the 2005 Stock Option Plan (the "**Plan**") pursuant to which shares of common stock of the Company have been reserved for issuance under the Plan.

Now, Therefore, the parties hereto agree as follows:

1. Incorporation by Reference. The terms and conditions of the Plan, a copy of which has been delivered to Employee, are hereby incorporated herein and made a part hereof by reference as if set forth in full. In the event of any conflict or inconsistency between the provisions of this Agreement and those of the Plan, the provisions of the Plan shall govern and control.

2. Grant of Option; Purchase Price. Subject to the terms and conditions herein set forth, the Company hereby irrevocably grants from the Plan to Employee the right and option, hereinafter called the "**Option**", to purchase all or any part of an aggregate of the number of shares of common stock, $0.001 par value, of the Company (the "**Shares**") set forth at the end of this Agreement after "**Number of Shares**:" at the price per Share set forth at the end of this Agreement after "**Purchase Price**:".

3. Exercise and Vesting of Option. The Option shall be exercisable only to the extent that all, or any portion thereof, has vested in the Employee. Except as provided herein in paragraph 4, the Options shall vest in Employee in _____ cumulative installments of _____ percent (_____%) of the total grant beginning on the first anniversary of the date of this Agreement, with an additional _____ percent (_____%) of the total grant becoming exercisable on each of the next _____ (_____) successive anniversaries of such date, so long as Employee remains an employee of the Company (each such date is hereinafter referred to singularly as a "**Vesting Date**" and collectively as "**Vesting Dates**").

4. Termination of Employment. Other than as expressly provided for in the Employee's employment agreement, if any, in the event that the Employee ceases to be employed by the Company, for any reason or no reason, with or without cause, prior to any Vesting Date, that part of the Option scheduled to vest on such Vesting Date, and all parts of the Option scheduled to vest in the future, shall not vest and all of Employee's rights to and under such non-vested parts of the Option shall terminate.

5. Term of Option. To the extent vested, and except as otherwise provided in this Agreement or the Employee's employment agreement, if any, the Option shall be exercisable for ten (10) years from the date of this Agreement; provided, however, that in the event Employee ceases to be employed by the Company, for any reason or no reason, with or without cause, Employee or his/her legal representative shall have ninety (90) days from the date of such termination of his/her position as an employee to exercise any part of the Option vested pursuant to Section 3 of this Agreement. Upon the expiration of such ninety (90) day period, or, if earlier upon the date that is 10 years from the Grant Date (the "Expiration Date"), the Option shall terminate and become null and void.

6. Rights of Option Holder. Employee, as holder of the Option, shall not have any of the rights of a shareholder with respect to the Shares covered by the Option except to the extent that one or more certificates for such Shares shall be delivered to him or her upon the due exercise of all or any part of the Option.

7. Transferability. The Option shall not be transferable except to the extent permitted by the Plan.

8. Securities Law Matters. Employee acknowledges that the Shares to be received by him or her upon exercise of the Option may not have been registered under the Securities Act of 1933, as amended, or the Blue Sky laws of any state (collectively, the "**Securities Acts**"). If such Shares have not been so registered, Employee acknowledges and understands that the Company is under no obligation to register, under the Securities Acts, the Shares received by him or her or to assist him or her in complying with any exemption from such registration if he or she should at a later date wish to dispose of the Shares. Employee acknowledges that if not then registered under the Securities Acts, the Shares shall bear a legend restricting the transferability thereof, such legend to be substantially in the following form:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. THE SHARES MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED OR OTHERWISE DISPOSED OF UNLESS SO REGISTERED OR QUALIFIED, UNLESS AN EXEMPTION EXISTS OR UNLESS SUCH DISPOSITION IS NOT SUBJECT TO THE FEDERAL OR STATE SECURITIES LAWS, AND NILE THERAPEUTICS, INC. MAY REQUIRE THAT THE AVAILABILITY OR ANY EXEMPTION OR THE INAPPLICABILITY OF SUCH SECURITIES LAWS B E ESTABLISHED BY AN OPINION OF COUNSEL, WHICH OPINION OF COUNSEL SHALL BE REASONABLY SATISFACTORY TO NILE THERAPEUTICS, INC.."

9. Employee Representations. Employee hereby represents and warrants that Employee has reviewed with his or her own tax advisors the federal, state, and local tax consequences of the transactions contemplated by this Agreement. Employee is relying solely on such advisors and not on any statements or representation of the Company or any of its agents. Employee understands that he or she will be solely responsible for any tax liability that may result to him or her as a result of the transactions contemplated by this Agreement. The Option, if exercised, will be exercised for investment and not with a view to the sale or distribution of the Shares to be received upon exercise thereof.

10. Notices. All notices and other communications provided in this Agreement will be in writing and will be deemed to have been duly given when received by the party to whom it is directed at the following addresses:

If to the Company:	If to Employee:
Nile Therapeutics, Inc. 2850 Telegraph Ave., Suite 310 Berkeley, CA Attn: Chief Financial Officer	_____ _____ _____

11. General.

(a) The Option is granted pursuant to the Plan and is governed by the terms thereof. The Company shall at all times during the term of the Option reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of this Option Agreement.

(b) Nothing herein expressed or implied is intended or shall be construed as conferring upon or giving to any person, firm, or corporation other than the parties hereto, any rights or benefits under or by reason of this Agreement.

(c) Each party hereto agrees to execute such further documents as may be necessary or desirable to effect the purposes of this Agreement.

(d) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

(e) This Agreement, in its interpretation and effect, shall be governed by the laws of the State of Delaware applicable to contracts executed and to be performed therein.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

Number of Shares: _____

Exercise Price: $ /share

EMPLOYEE:

_____
Name:

NILE THERAPEUTICS, INC.

By:_____
Its:

EXHIBIT 10.11

Nile Therapeutics, Inc.
Incentive Stock option Agreement

This Incentive Stock Option Agreement is made and entered into as of the __ day of _____, 200__ (the "Grant Date"), between _____ ("**Employee**") and Nile Therapeutics, Inc., a Delaware corporation (the "**Company**").

Background

A. Employee has either been hired to serve as an employee to the Company or the Company desires to induce Employee to continue to serve the Company as an employee.

B. The Company has adopted the 2005 Stock Option Plan (the "**Plan**") pursuant to which shares of common stock of the Company have been reserved for issuance under the Plan.

Now, Therefore, the parties hereto agree as follows:

1. Incorporation by Reference. The terms and conditions of the Plan, a copy of which has been delivered to Employee, are hereby incorporated herein and made a part hereof by reference as if set forth in full. In the event of any conflict or inconsistency between the provisions of this Agreement and those of the Plan, the provisions of the Plan shall govern and control.

2. Grant of Option; Purchase Price. Subject to the terms and conditions herein set forth, the Company hereby irrevocably grants from the Plan to Employee the right and option, hereinafter called the "**Option**," to purchase all or any part of an aggregate of the number of shares of common stock, $0.001 par value, of the Company (the "**Shares**") set forth at the end of this Agreement after "Number of Shares:" at the price per Share set forth at the end of this Agreement after "Purchase Price:"

3. Exercise and Vesting of Option. The Option shall be exercisable only to the extent that all, or any portion thereof, has vested in the Employee. Except as provided herein in paragraph 4, the Options shall vest in Employee in _____ cumulative installments of _____ percent (_____%) of the total grant beginning on the first anniversary of the date of this Agreement, with an additional _____ percent (_____%) of the total grant becoming exercisable on each of the next _____ (_____) successive anniversaries of such date, so long as Employee remains an employee of the Company (each such date is hereinafter referred to singularly as a "**Vesting Date**" and collectively as "**Vesting Dates**").

4. Termination of Employment. Other than as expressly provided for in the Employee's employment agreement, if any, in the event that the Employee ceases to be employed by the Company, for any reason or no reason, with or without cause, prior to any Vesting Date, that part of the Option scheduled to vest on such Vesting Date, and all parts of the Option scheduled to vest in the future, shall not vest and all of Employee's rights to and under such non-vested parts of the Option shall terminate.

5. Term of Option. To the extent vested, and except as otherwise provided in this Agreement or the Employee's employment agreement, if any, the Option shall be exercisable for ten (10) years from the date of this Agreement; *provided, however*, that in the event Employee ceases to be employed by the Company, for any reason or no reason, with or without cause, Employee or his/her legal representative shall have ninety (90) days from the date of such termination of his/her position as an employee to exercise any part of the Option vested pursuant to Section 3 of this Agreement. Upon the expiration of such ninety (90) day period, or if earlier, upon the date that is 10 years from the Grant Date (the "Expiration Date"), the Option shall terminate and become null and void.

6. Rights of Option Holder. Employee, as holder of the Option, shall not have any of the rights of a shareholder with respect to the Shares covered by the Option except to the extent that one or more certificates for such Shares shall be delivered to him or her upon the due exercise of all or any part of the Option.

7. Transferability. The Option shall not be transferred except to the extent permitted in the Plan.

8. Securities Law Matters. Employee acknowledges that the Shares to be received by him or her upon exercise of the Option may not have been registered under the Securities Act of 1933, as amended, or the Blue Sky laws of any state (collectively, the "**Securities Acts**"). If such Shares are not so registered, Employee acknowledges and understands that the Company is under no obligation to register, under the Securities Acts, the Shares received by him or her or to assist him or her in complying with any exemption from such registration if he or she should at a later date wish to dispose of the Shares. Employee acknowledges that if not then registered under the Securities Acts, the Shares shall bear a legend restricting the transferability thereof, such legend to be substantially in the following form:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. THE SHARES MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED OR OTHERWISE DISPOSED OF UNLESS SO REGISTERED OR QUALIFIED, UNLESS AN EXEMPTION EXISTS OR UNLESS SUCH DISPOSITION IS NOT SUBJECT TO THE FEDERAL OR STATE SECURITIES LAWS, NILE THERAPEUTICS, INC. MAY REQUIRE THAT THE AVAILABILITY OR ANY EXEMPTION OR THE INAPPLICABILITY OF SUCH SECURITIES LAWS BE ESTABLISHED BY AN OPINION OF COUNSEL, WHICH OPINION OF COUNSEL SHALL BE REASONABLY SATISFACTORY TO NILE THERAPEUTICS, INC.."

9. Incentive Stock Option. The Company intends that the Option shall be an incentive stock option governed by the provisions of Section 422 of the Internal Revenue Code of 1986, as amended (the "**Code**"). The terms of the Plan and the Option shall be interpreted and administered so as to satisfy the requirements of the Code.

10. Employee Representations. Employee hereby represents and warrants that Employee has reviewed with his or her own tax advisors the federal, state, and local tax consequences of the transactions contemplated by this Agreement. Employee is relying solely on such advisors and not on any statements or representation of the Company or any of its agents. Employee understands that he or she will be solely responsible for any tax liability that may result to him or her as a result of the transactions contemplated by this Agreement. The Option, if exercised, will be exercised for investment and not with a view to the sale or distribution of the Shares to be received upon exercise thereof.

11. Notices. All notices and other communications provided in this Agreement will be in writing and will be deemed to have been duly given when received by the party to whom it is directed at the following addresses:

If to the Company:

Nile Therapeutics, Inc.
2850 Telegraph Ave., Suite 310
Berkeley, CA
Attn: Chief Financial Officer

If to Employee:

_____
_____
_____

12. General.

(a) The Option is granted pursuant to the Plan and is governed by the terms thereof. The Company shall at all times during the term of the Option reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of this Option Agreement.

(b) Nothing herein expressed or implied is intended or shall be construed as conferring upon or giving to any person, firm, or corporation other than the parties hereto, any rights or benefits under or by reason of this Agreement.

(c) Each party hereto agrees to execute such further documents as may be necessary or desirable to effect the purposes of this Agreement.

(d) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

(e) This Agreement, in its interpretation and effect, shall be governed by the laws of the State of Delaware applicable to contracts executed and to be performed therein.

In Witness Whereof, the undersigned have executed this Agreement as of the date first written above.

Number of Shares: _____

Exercise Price: $ /share

EMPLOYEE:

_____
Name:

NILE THERAPEUTICS, INC.

By:_____
Its:

Exhibit 10.12

SUBSCRIPTION AGREEMENT

This Subscription Agreement (this "Agreement") is made as of the date set forth on the signature page of this Agreement by and between Nile Therapeutics, Inc., a Delaware corporation (the "Company"), and each party who is a signatory hereto (individually, a "Subscriber" and collectively with other signatories of similar subscription agreements entered into in connection with the Offering described below, the "Subscribers").

RECITALS:

WHEREAS, the Company is offering to sell shares (the "Shares" or the "Securities") of the Company's common stock, $0.001 par value per share (the "Common Stock") in a private offering (the "Offering") to qualified investors as a price per share equal to $7.92 (the "Offering Price");

WHEREAS, the Company desires to raise in the Offering a minimum of Fifteen Million Dollars ($15,000,000.00) (the "Minimum Offering") and a maximum of and a maximum of Twenty Million Dollars ($20,000,000.00) (the "Maximum Offering"). The minimum investment per Subscriber is $500,000.00, although the Company, in its sole discretion, may accept subscriptions for lesser amounts;

WHEREAS, the terms of the Offering are summarized in that certain Confidential Term Sheet dated August 16, 2007 (the "Memorandum") that has been previously provided to the Subscriber;

WHEREAS, simultaneously with the Closing (as defined below), the Company intends to complete a "reverse merger" (the "Merger") with the wholly-owned subsidiary ("Merger Sub") of a publicly reporting company ("Pubco") pursuant to the merger agreement (the "Merger Agreement") attached as an exhibit to the Memorandum. The Company expects that such Merger Sub will be Nile Merger Sub, Inc., a Delaware corporation, a wholly-owned subsidiary of SMI Products, Inc., a Delaware corporation;

WHEREAS, the Company has retained Riverbank Capital Securities, Inc., a National Association of Securities Dealers, Inc. ("NASD") member broker dealer to act as its placement agent in connection with the sale of the securities pursuant to this Agreement (the "Placement Agent"); and

WHEREAS, the Company desires to enter into this Agreement to issue and sell the Securities and the Subscriber desires to purchase that number of Securities set forth on the signature page hereto on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual representations and covenants hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE I SUBSCRIPTION OF SECURITIES

1.1. Subject to the terms set forth herein and in the Memorandum, the Subscriber hereby irrevocably subscribes for and agrees to purchase from the Company that number of Securities as is set forth on the signature page hereto at the Offering Price; the total purchase price is set forth on the signature page attached hereto (the "Purchase Price"). The aggregate Purchase Price is payable by wire transfer of immediately available funds pursuant to the wire instructions attached as Exhibit B.

1.2. The minimum purchase that may be made by any prospective investor shall be $500,000.00. Subscriptions for investment below the minimum investment may be accepted at the discretion of the Company. The Company reserves the right to reject any subscription made hereby, in whole or in part, in its sole discretion. The Company's agreement with each Subscriber is a separate agreement and the sale of the Securities to each Subscriber is a separate sale.

1.3. Pending the sale of the Securities, all funds paid hereunder shall be deposited by the Subscriber in escrow with US Bank National Association Corporation Trust (the "Escrow Agent"). The Offering shall expire on August 31, 2007, subject to extension for up to 30 days (the "Termination Date") at the discretion of the Company, and upon written notice by the Company to Pubco. The Subscriber hereby authorizes and directs the Company and the Placement Agent to direct the Escrow Agent to return any funds for unaccepted subscriptions to the same account from which the funds were drawn, without interest.

1.4. On or prior to Termination Date, the Company shall conduct a closing of the purchase and sale of Securities (the "Closing"). The Closing shall occur at the offices of the Placement Agent at 689 5th Avenue, 14th Floor, New York, New York, 10022. Certificates evidencing the Common Stock purchased by the Subscriber pursuant to this Agreement will be prepared for delivery to the Subscriber within ten (10) business days following the Closing. The Subscriber hereby authorizes and directs the Company to deliver the certificates representing the Common Stock purchased by the Subscriber pursuant to this Agreement directly to the residential or business address indicated on the signature page hereto. In the event the Company shall not have accepted subscriptions (including the subscription accepted by its execution and delivery of this Agreement in accordance with the terms and conditions herein) for purchases of the Minimum Amount on or before the Termination Date, then this subscription shall be void an all purchases hereunder by the Subscriber shall be returned to the Subscriber, without interest.

1.5. The Subscriber hereby authorizes and directs the Company to return, without interest, any funds for unaccepted subscriptions (including any subscriptions that were not accepted as a result of the termination of the Offering) to the same account from which the funds were drawn.

1.6. At Closing, the Company shall pay to the Placement Agent a non-accountable expense allowance of $100,000 for introductions to investors and other services related to the Offering.

ARTICLE II REPRESENTATIONS BY SUBSCRIBER

The Subscriber agrees, represents and warrants to the Company and the Placement Agent, severally and solely with respect to itself and its purchase hereunder and not with respect to any of the other Subscribers, that:

2.1. Organization and Qualification. If an entity, the Subscriber is duly incorporated, organized or otherwise formed, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated, organized or otherwise formed.

2.2. Authorization.

(a) If an entity:

(i) The Subscriber has the requisite corporate or other requisite power and authority to enter into and to perform its obligations under this agreement and to consummate the transactions contemplated hereby in accordance with the terms hereof; and

(ii) the execution, delivery and performance of this Agreement by the Subscriber and the consummation by it of the transactions contemplated hereby have been duly authorized by the Subscriber's Board of Directors or other governing body and no further consent or authorization of the Subscriber, its Board of Directors or its shareholders, members or other interest holders is required.

(b) If an individual:

(i) The undersigned has reached the age of 21 and has the legal capacity, power and authority to execute, deliver and perform the undersigned's obligations under this Agreement and all other related agreements or certificates.

2.3. Enforcement. This Agreement has been duly executed by the Subscriber and constitutes a legal, valid and binding obligation of the Subscriber enforceable against the Subscriber in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization or moratorium or similar laws affecting the rights of creditors generally and the application of general principles of equity.

2.4. Consents. The Subscriber is not required to give any notice to, make any filing, application or registration with, obtain any authorization, consent, order or approval of or obtain any waiver from any person or entity in order to execute and deliver this Agreement or to consummate the transactions contemplated hereby, except for such notices, filings, applications, registrations, authorizations, consents, orders, approvals and waivers (if any) as have been obtained and the filing of a Form D with the Securities and Exchange Commission (the "SEC") and other similar filings required by applicable state securities or "blue sky" laws and regulations in connection with offerings of securities under Rule 506 ("Rule 506") promulgated under the Securities Act of 1933, as amended (the "Securities Act").

2.5. Non-contravention. Neither the execution and the delivery by the Subscriber of this Agreement, nor the consummation by the Subscriber of the transactions contemplated hereby, will (a) violate any law, rule, injunction, or judgment of any governmental agency or court to which the Subscriber is subject or any provision of its charter, bylaws, trust agreement, or other governing documents or (b) conflict with, result in a breach of, or constitute a default under, any agreement, contract, lease, license, instrument, or other arrangement to which the Subscriber is a party or by which the Subscriber is bound or to which any of its assets is subject.

2.6. Investment Purpose. The Subscriber is purchasing the Securities for its own account and not with a present view toward the public sale or distribution thereof.

2.7. Accredited Subscriber Status. The Subscriber is an "accredited investor" as defined in Regulation D under the Securities Act and has delivered to the Company a Confidential Investor Questionnaire substantially in the form of Exhibit A attached hereto. The Subscriber hereby represents and warrants that, either by reason of the Subscriber's business or financial experience or the business or financial experience of the Subscriber's advisors (including, but not limited to, a "purchaser representative" (as defined in Rule 501(h) promulgated under Regulation D), attorney and/or an accountant each as engaged by the Subscriber at its sole risk and expense, the Subscriber (a) has the capacity to protect its own interests in connection with the transaction contemplated hereby and/or (b) the Subscriber has prior investment experience, including investments in securities of privately-held companies or companies whose securities are not listed, registered, quoted and/or traded on a national securities exchange, including the Nasdaq Global Select Market, the Nasdaq Global Market, and the Nasdaq Capital Market (together, the "NASDAQ") and/or (c) to the extent necessary, the Subscriber has retained, at its sole risk and expense, and relied upon appropriate professional advice regarding the investment, tax and legal merits and consequences of this Agreement and the purchase of the Securities hereunder, and/or (d), if an entity, the Subscriber was not formed for the sole purpose of purchasing the Securities.

2.8. Reliance on Exemptions. The Subscriber agrees, acknowledges and understands that the Securities are being offered and sold to it in reliance upon specific exemptions from the registration requirements of United States federal and applicable state securities or "blue sky" laws and that the Company and its counsel are relying upon the truth and accuracy of, and the Subscriber's compliance with, the representations, warranties, covenants, agreements, acknowledgments and understandings of the Subscriber set forth herein in order to determine the availability of such exemptions and the eligibility of the Subscriber to acquire the Securities.

2.9. No General Solicitation. The Subscriber (a) was contacted regarding the sale of the Securities by the Company or the Placement Agent (or their respective authorized agents or representatives) with whom the Subscriber had a prior substantial pre-existing relationship and (b) no Securities were offered or sold to it by means of any form of general solicitation or general advertising, and in connection therewith, the Subscriber did not receive any general solicitation or general advertising including, but not limited to, the Subscriber's: (i) receipt or review of any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, whether closed circuit, or generally available; or (ii) attendance at any seminar meeting or industry investor conference whose attendees were invited by any general solicitation or general advertising.

2.10. Information.

(a) The Subscriber agrees, acknowledges and understands that the Subscriber and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company, and materials relating to the offer and sale of the Securities that have been requested by the Subscriber or its advisors, if any, including, without limitation, the Memorandum, the risk factors set forth therein, and all exhibits and appendices to the Memorandum (collectively with this Subscription Agreement, the "Offering Documents"). The Subscriber represents and warrants that the Subscriber and its advisors, if any, have been afforded the opportunity to ask questions of the Company. The Subscriber agrees, acknowledges and understands that neither such inquiries nor any other due diligence investigation conducted by the Subscriber or any of its advisors or representatives modify, amend or affect the Subscriber's right to rely on the Company's representations and warranties contained in ARTICLE III below.

(b) The Subscriber agrees, acknowledges and understands that the Placement Agent has not supplied any information for inclusion in the Memorandum other than information furnished in writing to the Company by the Placement Agent specifically for inclusion in the Memorandum relating to the Placement Agent, that the Placement Agent has no responsibility for the accuracy or completeness of the Memorandum and that the Subscriber has not relied upon the independent investigation or verification, if any, which may have been undertaken by the Placement Agent.

2.11. Acknowledgement of Risk. The Subscriber agrees, acknowledges and understands that the Subscriber's investment in the Securities involves a significant degree of risk, including, without limitation that: (a) the Company is a development stage business with limited operating history and requires substantial funds in addition to the proceeds from the sale of the Securities; (b) an investment in the Company is highly speculative and only subscribers who can afford the loss of their entire investment should consider investing in the Company and the Securities; (c) the Subscriber may not be able to liquidate its investment; (d) transferability of the Common Stock is extremely limited; and (e) in the event of a disposition of the Common Stock, the Subscriber can sustain the loss of its entire investment. The Subscriber agrees, acknowledges and understands that such risks are set forth in greater detail in the Memorandum.

2.12. Governmental Review. The Subscriber agrees, acknowledges and understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities or an investment therein.

2.13. Transfer or Resale. The Subscriber agrees, acknowledges and understands that:

(a) the Common Stock has not been and, except as set forth in ARTICLE IV, will not be registered under the Securities Act or any applicable state securities or "blue sky" laws. Consequently, the Subscriber may have to bear the risk of holding the Common Stock for an indefinite period of time because the Common Stock may not be transferred unless: (i) the resale of the Common Stock is registered pursuant to an effective registration statement under the Securities Act; (ii) the Subscriber has delivered to the Company an opinion of counsel reasonably acceptable to the Company and its counsel (in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that the Common Stock to be sold or transferred may be sold or transferred pursuant to an exemption from such registration including, without limitation, Common Stock sold or transferred pursuant to Rule 144 promulgated under the Securities Act ("Rule 144"); and

(b) any sale of the Common Stock made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and, if Rule 144 is not applicable, any resale of the Common Stock under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC promulgated thereunder.

2.14. No Shorting. The Subscriber agrees, acknowledges and understands that during the period commencing on the date hereof through the last date upon which the Subscriber holds any Securities or Registrable Securities (as defined below), the Subscriber may not directly or indirectly, through related parties, affiliates or otherwise, sell "short" or "short against the box" (as those terms are generally understood) any equity security of the Company.

2.15. Legends. The Subscriber agrees, acknowledges and understands that the certificates representing the Common Stock (the "Restricted Securities") will bear restrictive legends in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such Restricted Securities):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT") OR THE SECURITIES OR "BLUE SKY" LAWS OF ANY STATE OF THE UNITED STATES. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED UNLESS (I) THE RESALE OF THE COMMON STOCK IS REGISTERED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT; (II) THE SUBSCRIBER HAS DELIVERED TO THE COMPANY AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY AND ITS COUNSEL (IN FORM, SUBSTANCE AND SCOPE CUSTOMARY FOR OPINIONS OF COUNSEL IN COMPARABLE TRANSACTIONS) TO THE EFFECT THAT THE COMMON STOCK TO BE SOLD OR TRANSFERRED MAY BE SOLD OR TRANSFERRED PURSUANT TO AN EXEMPTION FROM SUCH REGISTRATION, INCLUDING, WITHOUT LIMITATION, COMMON STOCK SOLD OR TRANSFERRED PURSUANT TO RULE 144 PROMULGATED UNDER THE SECURITIES ACT ("RULE 144").

2.16. The Subscriber agrees, acknowledges and understands that the Company will make a notation in the appropriate records with respect to the foregoing restrictions on the transferability of the Restricted Securities. Certificates evidencing the Restricted Securities shall not be required to contain such legend or any other legend (a) following any sale of the Restricted Securities to a non-affiliate of the Company pursuant to Rule 144, or (b) if the Restricted Securities are being sold under Rule 144(k) or have been sold pursuant to a registration statement and in compliance with the Subscriber's obligations set forth in this Agreement, or (c) such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the Staff of the SEC), in each such case (a) through (c) to the extent reasonably determined by the Company's legal counsel.

2.17. Residency. The Subscriber is a resident of the jurisdiction set forth immediately below the Subscriber's name on the signature pages hereto.

2.18. Acknowledgements Regarding Placement Agent.

(a) The Subscriber agrees, acknowledges and understands that the Placement Agent is acting as placement agent for the Securities being offered hereby but will not be compensated for acting in such capacity, other than that the Company will pay the Placement Agent a non-accountable expense allowance of $100,000 for introductions to investors and other services. The Subscriber further agrees, acknowledges and understands that the Placement Agent has acted solely as an agent of the Company in connection with the Offering, that the information and data provided to the Subscriber in connection with the transactions contemplated hereby have not been subjected to independent verification by the Placement Agent and that the Placement Agent makes no representation or warranty with respect to the accuracy or completeness of such information, data or other related disclosure material. The Subscriber further agrees and acknowledges that in making its decision to enter into this Agreement and purchase the Securities, it has relied on its own examination of the Company and the terms and consequences of holding the Securities. The Subscriber further agrees, acknowledges and understands that the provisions of this Section 2.18 are for the benefit of, and may be enforced by, the Placement Agent.

(b) The Subscriber agrees, acknowledges and understands that the Placement Agent may engage other persons, selected by it in the Placement Agent's discretion and with the consent of the Company, which consent will not unreasonably be withheld, who are members of the NASD, or who are located outside the United States, to assist the Placement Agent in connection with this Offering and that the Placement Agent shall be responsible for the compensation of any selected dealer so engaged.

2.19. Not a Registered Representative. The Subscriber agrees, acknowledges and understands that if it is a Registered Representative of a NASD member firm, he or she must give such firm the notice required by the NASD's Rules of Fair Practice, receipt of which must be acknowledged by such firm in the Confidential Investor Questionnaire attached hereto as Exhibit A.

2.20. No Brokers. The Subscriber has not engaged, consented to or authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. The Subscriber hereby agrees to indemnify and hold harmless the Company and the Placement Agent from and against all fees, commissions or other payments owing to any such person or firm acting on behalf of the Subscriber hereunder.

2.21. Reliance on Representations. The Subscriber agrees, acknowledges and understands that the Company and its counsel, as well as the Placement Agent, are entitled to rely on the representations, warranties and covenants made by the Subscriber herein.

2.22. No Representations by Placement Agent. The Subscriber acknowledges that the Placement Agent (including any of its members, managers, employees, agents or representatives) has not made any representations or warranties to the Subscriber concerning the Company, Merger Sub, Pubco, their respective businesses, condition (financial or otherwise) or prospects, or the Merger.

ARTICLE III REPRESENTATIONS BY THE COMPANY

The Company hereby represents and warrants to each Subscriber and the Placement Agent that:

3.1. Organization and Qualification. The Company is duly incorporated, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated, with full power and authority (corporate and other) to own, lease, use and operate its properties and to carry on its business as and where now owned, leased, used, operated and conducted. The Company is duly qualified to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a material adverse effect on (a) the business, operations assets or condition (financial or otherwise) of the Company or (b) the ability of the Company to perform its obligations pursuant to the transactions contemplated by this Agreement or under any instruments to be entered into or filed in connection herewith (collectively, a "Material Adverse Effect").

3.2. Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to perform its obligations under this Agreement, to consummate the transactions contemplated hereby and to issue the Securities in accordance with the terms hereof. The execution, delivery and performance of this Agreement by the Company and the consummation by it of the transactions contemplated hereby (including without limitation the issuance of the Common Stock) have been duly authorized by the Company's Board of Directors (the "Board") and no further consent or authorization of the Company, its Company or its shareholders is required that has not or will not be obtained prior to the Closing. This Agreement has been duly executed by the Company and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization or moratorium or similar laws affecting the rights of creditors generally and the application of general principles of equity.

3.3. Capitalization. The authorized capital stock of the Company is as set forth in the Memorandum. Except as set forth in the Memorandum, there are not issued, reserved for issuance or outstanding: (a) any Securities of capital stock or other voting securities of the Company; (b) any securities of the Company convertible into or exchangeable or exercisable for Securities of capital stock or voting securities of the Company; or (c) any warrants, calls, options or other rights to acquire from the Company, or and any obligation of the Company to issue, any capital stock, voting securities or securities convertible into or exchangeable or exercisable for capital stock or voting securities of the Company.

3.4. Issuance of Securities. The Securities purchased under this Agreement are duly authorized and, upon issuance in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, free and clear from all taxes, liens, claims, encumbrances and charges with respect to the issue thereof, will not be subject to preemptive rights or other similar rights of stockholders of the Company, and will not impose personal liability on the holders thereof.

3.5. No Conflicts; No Violation.

(a) The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby (including, without limitation, the issuance of the Securities) will not: (i) conflict with or result in a violation of any provision of its Certificate of Incorporation or Bylaws; (ii) violate or conflict with, result in a breach of any provision of, constitute a default (or an event which with notice or lapse of time, or both, could become a default) under or give to others any rights of termination, amendment, acceleration or cancellation of any material agreement, indenture, patent, patent license or instrument to which the Company is a party; or (iii) to the best of the Company's knowledge, result in a material violation of any law, rule, regulation, order, judgment or decree (including United States federal and state securities or "blue sky" laws and regulations and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company or by which any property or asset of the Company is bound or affected (except for such conflicts, breaches, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect).

(b) Except as specifically contemplated by this Agreement and as required under the Securities Act and any applicable state securities or "blue sky" laws or any listing agreement with any securities exchange or automated quotation system, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self regulatory agency in order for it to execute, deliver or perform any of its obligations under this Agreement in accordance with the terms hereof, or to issue and sell the Securities in accordance with the terms hereof. All consents, authorizations, orders, filings and registrations which the Company is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the date hereof.

3.6. Absence of Certain Changes. Except as disclosed in the Memorandum, since the date of the Memorandum (including any subsequent amendments or supplements thereto) there has been no material adverse change in the assets, liabilities, business, properties, operations, financial condition, prospects or results of operations of the Company, except that the Company has continued losses from operations.

3.7. Absence of Litigation. Other than as described in the Memorandum, to the Company's there is no action, suit, claim, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its officers or directors acting as such that could, individually or in the aggregate, have a Material Adverse Effect.

3.8. Intellectual Property Rights. The Company owns or possesses licenses or rights to use all patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names and copyrights that it believes are necessary to enable it to conduct its business as now operated (the "Intellectual Property"). Except as set forth in the Memorandum, there are no material options, licenses or agreements relating to the Intellectual Property, nor is the Company bound by, or a party to, any material options, licenses or agreements relating to the patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names or copyrights of any other person or entity. Except as disclosed in the Memorandum, there is no claim or action or proceeding pending or, to the Company's knowledge, threatened, that challenges the right of the Company with respect to any Intellectual Property.

3.9. Tax Status. The Company has timely made or filed all federal, state and foreign income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject (unless and only to the extent that the Company has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith, and has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. To the knowledge of the Company, there are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. The Company has not executed a waiver with respect to the statute of limitations relating to the assessment or collection of any foreign, federal, state or local tax. To the Company's knowledge, none of the Company's tax returns are presently being audited by any taxing authority.

3.10. No Brokers. Except as disclosed in the Memorandum, the Company has taken no action which would give rise to any claim by any person for brokerage commissions, finder's fees or similar payments relating to this Agreement or the transactions contemplated hereby, except for dealings with the Placement Agent, whose commissions and fees will be paid by the Company.

3.11. Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

3.12. Placement Agent. The Company has engaged, consented to and authorized the Placement Agent to act as agent of the Company in connection with the transactions contemplated by this Agreement. The Company will pay the Placement Agent a non-accountable expense allowance of $100,000 for introduction to investors and other services and the Company agrees to indemnify and hold harmless the Subscribers from and against all fees, commissions or other payments owing by the Company to the Placement Agent or any other person or firm acting on behalf of the Company hereunder.

3.13. Financial Statements. The financial statements of the Company included in the Memorandum (the "Financial Statements") (a) fairly present in all material respects the financial condition and position of the Company at the dates and for the periods indicated; (b) have been prepared in conformity with generally accepted accounting principles in the United States ("GAAP") consistently applied throughout the periods covered thereby, except as may be otherwise specified in such Financial Statements or the notes thereto and except that any unaudited financial statements may not contain all footnotes required by GAAP; and (c) fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of any unaudited statements, to normal, immaterial, year-end audit adjustments. Since the date of the most recent balance sheet included as part of the Financial Statements, and except as set forth in the Memorandum, there has not been to the Company's knowledge (a) any change in the assets, liabilities, financial condition or operations of the Company from that reflected in the Financial Statements, other than changes in the ordinary course of business, including ongoing losses, none of which individually or in the aggregate would reasonably be expected to have a Material Adverse Effect; or (b) any other event or condition of any character that, either individually or cumulatively, would reasonably be expected to have a Material Adverse Effect, except for the expenses incurred in connection with the transactions contemplated by this Agreement.

3.14. Title to Properties and Assets; Liens, Etc. The Company has good and marketable title to its properties and assets, including the properties and assets reflected in the most recent balance sheet included in the Financial Statements, and good title to its leasehold estates, in each case subject to no mortgage, pledge, lien, lease, encumbrance or charge, other than (a) those resulting from taxes which have not yet become delinquent; (b) liens and encumbrances which do not materially detract from the value of the property subject thereto or materially impair the operations of the Company; (c) those that have otherwise arisen in the ordinary course of business; and (d) those that would not reasonably be expected to have a Material Adverse Effect. The Company is in compliance with all material terms of each lease to which it is a party or is otherwise bound.

3.15. Obligations to Related Parties. Except as disclosed in the Memorandum or as would not reasonably be expected to have a Material Adverse Effect, there are no obligations of the Company to officers, directors, stockholders, or employees of the Company other than (a) for payment of salary or other compensation for services rendered; (b) reimbursement for reasonable expenses incurred on behalf of the Company; (c) standard indemnification provisions in the certificate of incorporation and by-laws; and (d) for other standard employee benefits made generally available to all employees (including stock option agreements outstanding under any stock option plan approved by the Board). Except as may be disclosed in the Memorandum or Financial Statements, the Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation.

3.16. Employee Relations; Employee Benefit Plans. The Company is not a party to any collective bargaining agreement or a union contract. The Company believes that its relations with its employees are good. No executive officer (as defined in Rule 501(f) of the Securities Act) of the Company has notified the Company that such officer intends to leave the Company or otherwise terminate such officer's employment with the Company. The Company is in compliance with all federal, state, local and foreign laws and regulations respecting employment and employment practices, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Except as disclosed in the Memorandum, the Company does not maintain any compensation or benefit plan, agreement, arrangement or commitment (including, but not limited to, "employee benefit plans", as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") for any present or former employees, officers or directors of the Company or with respect to which the Company has liability or makes or has an obligation to make contributions, other than any such plans, agreements, arrangements or commitments made generally available to the Company's employees.

3.17. Environmental Laws. To the knowledge of the Company (a) is in compliance with any and all Environmental Laws (as hereinafter defined); (b) has received all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its business; and (c) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (a), (b) and (c), the failure to so comply would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The term "Environmental Laws" means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

3.18. Disclosure. The Offering Documents and all other documents delivered to the Subscriber in connection herewith at the Closing, do not, as of their respective dates, contain any untrue statement of a material fact, or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. There are no facts that, individually or in the aggregate, would have a Material Adverse Effect that have not been disclosed in the Offering Documents (including the Schedules and Exhibits thereto) or any other documents delivered to the Subscriber in connection herewith or therewith at the Closing.

3.19. Securities Law Exemption. Assuming the truth and accuracy of the Subscriber's representations and warranties in this Agreement and the truth and accuracy of each of the other Subscribers' representations and warranties set forth in the subscription agreements executed by such other Subscribers, the offer, sale and issuance of the Securities as contemplated by this Agreement and the other subscription agreements are exempt from the registration requirements of the Act and applicable state securities laws, and neither the Company nor any authorized agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

3.20. Licenses and Permits.

(a) Except as set forth in the Offering Documents, the Company has obtained and maintains all federal, state, local and foreign licenses, permits, consents, approvals, registrations, authorizations and qualifications required to be maintained in connection with its operations as presently conducted and as proposed to be conducted, except where the failure to obtain or maintain such licenses, permits, consents, approvals, registrations, authorizations and qualifications could not have a Material Adverse Effect. The Company is not in default in any material respect under any of such licenses, permits, consents, approvals, registrations, memberships, authorizations and qualifications.

(b) To the Company's knowledge, the conduct of its business as presently and proposed to be conducted is not presently subject to continuing oversight, supervision, regulation or examination by any governmental official or body of the United States or any other jurisdiction wherein the Company conducts or proposes to conduct business, except as described in the Offering Documents and except such regulation as is applicable to commercial enterprises generally.

3.21. No Integrated Offering. Neither the Company nor any of its affiliates, nor any person acting on its or their behalf, has directly or indirectly made any offers or sales in any security or solicited any offers to buy any security under circumstances that would require registration under the Securities Act. Except as disclosed in the Offering Documents, the Company has not sold or issued any shares of Common Stock, convertible notes or warrants during the past six months, including sales pursuant to Rule 144A, Regulation D or Regulation S under the Act, other than shares issued pursuant to employee benefit plans, if any.

3.22. Related Party Transactions. No transaction has occurred between or among the Company and any of its affiliates, officers or directors or any affiliate of any such officer or director that is required to be described in the Offering Documents that is not so described.

3.23. Books and Records. The books, records and accounts of the Company accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company, all to the extent required by generally accepted accounting principles.

ARTICLE IV COVENANTS OF THE COMPANY AND SUBSCRIBER

4.1. Form D; Blue Sky Laws. The Company shall timely file with the SEC a Notice of Sale of Securities on Form D with respect to the Offering, as required under Regulation D. The Company will, on or before the Closing Date, take such action as it reasonably determines to be necessary to qualify the Securities for sale to the Subscriber under this Agreement under applicable securities (or "blue sky") laws or regulations of the states of the United States (or to obtain an exemption from such qualification).

4.2. Expenses. The Company and the Subscriber are liable for, and shall pay, their own expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement, including, without limitation, attorneys' and consultants' fees and expenses.

ARTICLE V CONDITIONS TO OBLIGATIONS OF THE SUBSCRIBER

The Subscriber's obligation to purchase Securities at the Closing is subject to the fulfillment on or prior to the Closing of the following conditions, which conditions may be waived at the option of the Subscriber to the extent permitted by law:

5.1. Representations and Warranties Correct. The representations and warranties made by the Company in ARTICLE III hereof shall be true and correct in all material respects when made, and, except for any representations and warranties made by the Company as of a specific date, shall be true and correct in all material respects on the Closing Date with the same force and effect as if they had been made on and as of said date.

5.2. Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to such purchase shall have been performed or complied with in all material respects.

5.3. No Legal Order Pending. There shall not then be in effect any legal or other order enjoining or materially restraining the transactions contemplated by this Agreement.

5.4. No Law Prohibiting or Restricting Such Sale. There shall not be in effect any law, rule or regulation prohibiting or materially restricting such sale or requiring any consent or approval of any person which shall not have been obtained to issue the Common Stock (except as otherwise provided in this Agreement).

5.5. Legal Opinion. The Placement Agent shall have received a legal opinion from the Company's outside counsel covering such matters as reasonably requested by the Placement Agent.

5.6. Officer's Certificates. The Company shall have delivered a Certificate, executed on behalf of the Company by its Chief Executive Officer, dated as of the Closing Date, certifying to the fulfillment of the conditions specified in Sections 5.1, 5.2, 5.3, and 5.4 of this ARTICLE V, and (ii) Pubco and Merger Sub shall have delivered a Certificate, executed by their respective Chief Executive Officers or Chief Financial Officers, dated as of the Closing Date, certifying to the representations and warranties and conditions set forth in the Merger Agreement.

5.7. Secretary Certificates. The Company shall have delivered a Certificate, executed on behalf of the Company by its Secretary, dated as of the Closing Date, certifying the resolutions adopted by the Board of Directors of the Company approving, as applicable, the transactions contemplated by this Agreement and the issuance of the Common Stock, certifying the current versions of its Articles of Incorporation and Bylaws or other organizational documents and certifying as to the signatures and authority of persons signing this Agreement and related documents on its behalf.

ARTICLE VI REGISTRATION RIGHTS.

6.1. Registration; Definitions.

(a) No later than sixty (60) days following the Merger (as defined in the Memorandum) (the "Registration Due Date"), the Company shall prepare and file with the SEC a registration statement covering the resale of all of the Registrable Securities (the "Registration Statement"). The Registration Statement required hereunder shall be on Form S-1, SB-2, or any another appropriate form in accordance herewith, in the sole discretion of the Company. Subject to the terms of this Agreement, the Company shall use its commercially reasonable efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as possible after the filing thereof and shall use its commercially reasonable efforts to keep the Registration Statement continuously effective under the Securities Act until the date when all Registrable Securities covered by the Registration Statement have been sold or may be sold without volume restrictions pursuant to Rule 144(k), as determined by the counsel to the Holder (as defined below) pursuant to a written opinion letter to such effect, addressed and acceptable to the Company's counsel, the Company's transfer agent and the affected Holders (the "Effectiveness Period").

(b) In the event the Company fails to file the Registration Statement with the SEC on or before Registration Due Date, the Company shall pay to each Subscriber, as liquidated damages and not as a penalty, an amount, for each month (or portion of a month) in which such delay shall occur, equal to one percent (1%) of the Purchase Price paid by each such Subscriber, until the point in time when the Company has filed the Registration Statement with the SEC.

(c) The term "Registrable Securities" shall mean (i) the Common Stock sold in the Offering, or (ii) the securities received by a Holder (as defined below) in connection with the Merger; provided, however, that securities shall only be treated as Registrable Securities if and only for so long as they (i) have not been sold (A) pursuant to a registration statement; (B) to or through a broker, dealer or underwriter in a public distribution or a public securities transaction; and/or (C) in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act under Section 4(1) thereof so that all transfer restrictions and restrictive legends with respect thereto, if any, are removed upon the consummation of such sale; (ii) are not held by a Holder (as defined below) or a permitted transferee; and (iii) are not eligible for sale pursuant to Rule 144(k) (or any successor thereto) under the Securities Act.

(d) The term "Holder" shall mean any person owning or having the right to acquire Registrable Securities or any permitted transferee of a Holder.

6.2. Registration Procedures; Company. In connection with the Company's registration obligations set forth in Section 6.1 above, the Company shall:

(a) Not less than five (5) business days prior to the filing of the Registration Statement or any related prospectus or any amendment or supplement thereto (i) furnish to the Holders copies of all such documents proposed to be filed (including documents incorporated or deemed incorporated by reference to the extent requested by such Person) which documents will be subject to the review of such Holders and (ii) cause its officers, directors, counsel and independent certified public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file the Registration Statement or any such prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that the Company is notified of such objection in writing no later than three (3) business days after the Holders have been so furnished copies of such documents.

(b) Prepare and file with the SEC such amendments, including post-effective amendments, to the Registration Statement and the prospectus used in connection therewith as may be necessary to keep the Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the SEC such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities.

(c) Use commercially reasonable efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order suspending the effectiveness of the Registration Statement or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(d) Comply with all applicable rules and regulations of the SEC.

(e) Furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (ii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form.

6.3. Registration Procedures; Subscriber. In connection with the Company's registration obligations set forth in Section 6.1 above:

(a) The Subscriber shall cooperate with the Company, as requested by the Company, in connection with the preparation and filing of any Registration Statement hereunder. The Company may require the Subscriber to promptly furnish in writing to the Company such information as may be required in connection with such registration including, without limitation, all such information as may be requested by the SEC or the NASD or any state securities commission and all such information regarding the Subscriber, the Registrable Securities held by the Subscriber and the intended method of disposition of the Registrable Securities. The Subscriber agrees to provide such information requested in connection with such registration within five (5) business days after receiving such written request, and the Company shall not be responsible for any delays in obtaining or maintaining the effectiveness of the Registration Statement caused by any Subscriber's failure to timely provide such information.

(b) If, in the good faith judgment of the Company, it would be detrimental to the Company or its stockholders for the Registration Statement to be filed or for resales of Registrable Securities to be made pursuant to the Registration Statement due to (i) the existence of a material development or potential material development involving the Company that the Company would be obligated to disclose in the Registration Statement, which disclosure would be premature or otherwise inadvisable at such time or would have a material adverse effect on the Company or its stockholders or (ii) a proposed filing of or use of an existing registration statement in connection with a Company-initiated registration of any class of its equity securities, which, in the good faith judgment of the Company, would adversely effect or require premature disclosure of the filing or use of such Company-initiated registration (notice thereof, a "Blackout Notice"), upon receipt of a Blackout Notice from the Company, the Subscriber shall immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement (the period during which such disposition is discontinued, the "Blackout Period") covering such Registrable Securities until (i) the Company advises the Subscriber that the Blackout Period has terminated and (ii) the Subscriber receives copies of a supplemented or amended prospectus, if necessary. If so directed by the Company, the Subscriber will deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Subscriber's possession (other than a limited number of file copies) of the prospectus covering such Registrable Securities that is current at the time of receipt of such notice.

(c) If the Subscriber determines to engage an underwriter (other than the Subscriber) in connection with the offering of any Registrable Securities (an "Underwritten Offering"), the Subscriber will enter into and perform its obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering, and will take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities. The Subscriber shall consult with the Company prior to any Underwritten Offering and shall defer such Underwritten Offering for a reasonable period upon the request of the Company.

(d) The Subscriber shall not take any action with respect to any distribution deemed to be made pursuant to the Registration Statement, which would constitute a violation of Regulation M under the Exchange Act or any other applicable rule, regulation or law.

6.4. Registration Expenses. All fees and expenses of the Company incident to the performance of or compliance with Section 6.1 and Section 6.2 hereof by the Company shall be borne by the Company. In addition, the Company shall pay, on a one-time basis, the reasonable fees and expenses of counsel to the Holders of up to $10,000 in the aggregate with respect to the review of any registration statement filed pursuant to Section 6.1 hereof, as directed by the then Holders of a majority of the Registrable Securities.

6.5. Indemnification. In the event that any Registrable Securities are included in a Registration Statement under this ARTICLE VI:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, or the Exchange Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any rule or regulation promulgated under the Securities Act, or the Exchange Act, and the Company will pay to each such Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 6.5(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter or controlling person.

(b) To the extent permitted by law, each Holder will indemnify and hold harmless the Company, each of its directors, each of its officers, each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, or the Exchange Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished or omitted by such Holder for use in connection with such registration; and each such Holder will pay, as incurred, any legal or other expenses incurred by any person intended to be indemnified pursuant to this Section 6.5(b), in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this Section 6.5(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; provided, further, that, in no event shall any indemnity under this Section 6.5(b) exceed the greater of the cash value of the (i) gross proceeds from the offering received by such Holder or (ii) such Holder's investment pursuant to this Agreement as set forth on the signature page attached hereto.

(c) Promptly after receipt by an indemnified party under this Section 6.5 of notice of the commencement of any action (including any governmental action), such indemnified party shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 6.5, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly notified, to assume the defense thereof with counsel selected by the indemnifying party and approved by the indemnified party (whose approval shall not be unreasonably withheld); provided, however, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 6.5, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 6.5.

(d) If the indemnification provided for in this Section 6.5 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage, or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) The obligations of the Company and Holders under this Section 6.5 shall survive the completion of any offering of Registrable Securities in a Registration Statement under this ARTICLE VI, and otherwise.

6.6. Cutback. In connection with filing the Registration Statement pursuant to Section 6.1 hereof, the obligations of the Company set forth in this ARTICLE VI are subject to any limitations on the Company's ability to register the full complement of such shares in accordance with Rule 415 under the Securities Act or other regulatory limitations. To the extent the number of such shares that can be registered is limited, the Company shall file a subsequent registration agreement which will provide, among other things, that the Company will use its commercially reasonable efforts to register additional changes of Registrable Securities as soon as permissible thereafter under applicable laws, rules and regulations so that all of such Registrable Securities are registered as soon as reasonably practicable.

6.7. Sales by Subscribers. The Subscriber shall sell any and all Registrable Securities (as defined below) purchased hereby in compliance with applicable prospectus delivery requirements, if any, or otherwise in compliance with the requirements for an exemption from registration under the Securities Act and the rules and regulations promulgated thereunder. The Subscriber will not make any sale, transfer or other disposition of the Securities in violation of federal or state securities or "blue sky" laws and regulations.

6.8. Piggy-Back Registrations. If at any time during the Effectiveness Period there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the SEC a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the stock option or other employee benefit plans, then the Company shall send to each Holder a written notice of such determination and, if within fifteen (15) days after the date of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered, subject to customary underwriter cutbacks applicable to all holders of registration rights.

6.9. Waivers. With the written consent of the Company and the Holders holding at least a majority of the Registrable Securities that are then outstanding, any provision of this ARTICLE VI may be waived (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely) or amended, which waiver shall be applicable to all Holders, and shall be deemed to have been consented to by all Holders. Upon the effectuation of each such waiver or amendment, the Company shall promptly give written notice thereof to the Holders, if any, who have not previously received notice thereof or consented thereto in writing.

ARTICLE VII MISCELLANEOUS

7.1. Governing Law; Jurisdiction. This Agreement will be governed by and interpreted in accordance with the laws of the State of Delaware without regard to the principles of conflict of laws. The parties hereto hereby submit to the exclusive jurisdiction of the United States federal and state courts located in the Borough of Manhattan, in the State of New York with respect to any dispute arising under this Agreement or the transactions contemplated hereby or thereby.

7.2. Counterparts; Signatures by Facsimile. This Agreement may be executed in two or more counterparts, all of which are considered one and the same agreement and will become effective when counterparts have been signed by each party and delivered to the other parties. This Agreement, once executed by a party, may be delivered to the other parties hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

7.3. Headings. The headings of this Agreement are for convenience of reference only, are not part of this Agreement and do not affect its interpretation.

7.4. Severability. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision will be deemed modified in order to conform to such statute or rule of law. Any provision hereof that may prove invalid or unenforceable under any law will not affect the validity or enforceability of any other provision hereof.

7.5. Entire Agreement; Amendments. This Agreement (including all schedules and exhibits hereto) constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof. Except as set forth in ARTICLE VI, no provision of this Agreement may be waived or amended other than by an instrument in writing signed by the party to be charged with enforcement.

7.6. Notices. Any notices required or permitted to be given under the terms of this Agreement must be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) and will be effective five days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally, or by courier (including a recognized overnight delivery service), in each case addressed to a party. The addresses for such communications are:

If to the Company:

Mr. Peter M. Strumph
2850 Telegraph Avenue, Suite 310
Berkeley, CA 94705
Tel: (510) 281-7701
Fax: (510) 288-1310

With a copy to:

Ira L. Kotel, Esq.
Dickstein Shapiro LLP
1177 Avenue of the Americas
New York, NY 10036

If to the Subscriber: To the address set forth immediately below the Subscriber's name on the signature pages hereto.

Each party will provide written notice to the other parties of any change in its address.

7.7. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties and their successors and assigns. The Company will not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Subscriber and the Subscriber may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company, and any such assignment without the prior written consent of the Company shall be void *a b initio*. Notwithstanding the foregoing, the Subscriber may assign all or part of its rights and obligations hereunder to any of its "affiliates," as that term is defined under the Securities Act, without the consent of the Company so long as the affiliate is an accredited investor (within the meaning of Regulation D) and agrees in writing to be bound by this Agreement. This provision does not limit the Subscriber's right to transfer the Common Stock pursuant to the terms of this Agreement or to assign the Subscriber's rights hereunder to any such transferee pursuant to the terms of this Agreement.

7.8. Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

7.9. Further Assurances. Each party will do and perform, or cause to be done and performed, all such further acts and things, and will execute and deliver all other agreements, certificates, instruments and documents, as another party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

7.10. No Strict Construction. The language used in this Agreement is deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

7.11. Acceptance. Upon the execution and delivery of this Agreement by the Subscriber, this Agreement shall become a binding obligation of the Subscriber with respect to the purchase of Securities as herein provided, subject to acceptance by the Company; subject, however, to the right hereby reserved to the Company to enter into the same agreements with other Subscribers and to add and/or delete other persons as Subscribers.

7.12. Waiver. It is agreed that a waiver by either party of a breach of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent breach by that same party.

7.13. Other Documents. The parties agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

7.14. Public Statements. The Subscriber agrees not to issue any public statement with respect to the Subscriber's investment or proposed investment in the Company or the terms of any agreement or covenant between them and the Company without the Company's prior written consent, except such disclosures as may be required under applicable law or under any applicable order, rule or regulation.

7.15. Exculpation Among Subscribers. The Subscriber agrees, acknowledges and understands that it is not relying on any of the other Subscribers in making its investment or decision to invest in the Company. The Subscriber agrees, acknowledges and understands that none of the other Subscribers nor their respective controlling persons, officers, directors, partners, agents or employees shall be liable to the Subscriber for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Securities or the execution of or performance under this Agreement, nor shall the Subscriber be liable to the other Subscribers for any action heretofore or hereafter taken or omitted to be taken by the Subscriber in connection with the purchase of the Securities or the execution of or performance under this Agreement.

7.16. Several Obligations. The obligations of each Subscriber under any Subscription Agreements are several and not joint with the obligations of any other Subscriber, and no Subscriber shall be responsible in any way for the performance of the obligations of any other Subscriber under any Subscription Agreement. Nothing contained herein or in any other Subscription Agreement, and no action taken by any Subscriber pursuant hereto or thereto, shall be deemed to constitute the Subscribers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Subscribers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Subscription Agreements. Each Subscriber confirms that it has independently participated in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Subscriber shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Subscription Agreements, and it shall not be necessary for any other Subscriber to be joined as an additional party in any proceeding for such purpose. The Company acknowledges that each of the Subscribers has been provided with the same Subscription Agreements for the purpose of closing a transaction with multiple Subscribers and not because it was required or requested to do so by any Subscriber.

7.17. Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

[Signature Page to Follow]

NUMBER OF SHARES _____ x $ _____ = $ _____
(Offering Price) **(Investment Amount)**

Signature	Signature (if purchasing jointly)
Name Typed or Printed	Name Typed or Printed
Entity Name	Entity Name
Address	Address
City, State and Zip Code	City, State and Zip Code
Telephone-Business	Telephone—Business
Telephone-Residence	Telephone—Residence
Facsimile-Business	Facsimile—Business
Facsimile-Residence	Facsimile—Residence

Tax ID # or Social Security # _____

Name in which securities should be issued: _____

Dated: _____, 2007

This Subscription Agreement is agreed to and accepted as of _____, 2007.
(Date)

NILE THERAPEUTICS, INC.

By: _____

Name: Mr. Peter M. Strumph
Title: Chief Executive Officer

CERTIFICATE OF SIGNATORY

(To be completed if Securities are being subscribed for by an entity)

I,_____, am the_____ of _____ (the "Entity").

I certify that I am empowered and duly authorized by the Entity to execute and carry out the terms of the Subscription Agreement and to purchase and hold the Securities, and certify further that the Subscription Agreement has been duly and validly executed on behalf of the Entity and constitutes a legal and binding obligation of the Entity.

IN WITNESS WHEREOF, I have set my hand this _____ day of _____,_2007

_____

(Signature)

EXHIBIT A

CONFIDENTIAL INVESTOR QUESTIONAIRRE

1. The Subscriber represents and warrants that he, she or it comes within one category marked below, and that for any category marked, he, she or it has truthfully set forth, where applicable, the factual basis or reason the Subscriber comes within that category. ALL INFORMATION IN RESPONSE TO THIS SECTION WILL BE KEPT STRICTLY CONFIDENTIAL. The undersigned agrees to furnish any additional information which the Company deems necessary in order to verify the answers set forth below.

Category A __ The undersigned is an individual (not a partnership, corporation, etc.) whose individual net worth, or joint net worth with his or her spouse, presently exceeds $1,000,000.

Explanation. In calculating net worth you may include equity in personal property and real estate, including your principal residence, cash, short-term investments, stock and securities. Equity in personal property and real estate should be based on the fair market value of such property less debt secured by such property.

Category B __ The undersigned is an individual (not a partnership, corporation, etc.) who had an income in excess of $200,000 in each of the two most recent years, or joint income with his or her spouse in excess of $300,000 in each of those years (in each case including foreign income, tax exempt income and full amount of capital gains and losses but excluding any income of other family members and any unrealized capital appreciation) and has a reasonable expectation of reaching the same income level in the current year.

Category C __ The undersigned is a director or executive officer of the Company which is issuing and selling the Preferred Stock.

Category D __ The undersigned is a bank; a savings and loan association; insurance company; registered investment company; registered business development company; licensed small business investment company ("SBIC"); or employee benefit plan within the meaning of Title 1 of ERISA and (a) the investment decision is made by a plan fiduciary which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the plan has total assets in excess of $5,000,000 or (c) is a self directed plan with investment decisions made solely by persons that are accredited investors. (describe entity)

_____

_____

Category E __ The undersigned is a private business development company as defined in section 202(a)(22) of the Investment Advisors Act of 1940. (describe entity)

_____
_____

Category F __ The undersigned is either a corporation, partnership, Massachusetts business trust, or non-profit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, in each case not formed for the specific purpose of acquiring the Preferred Stock and with total assets in excess of $5,000,000. (describe entity)

_____
_____

Category G __ The undersigned is a trust with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the Preferred Stock, where the purchase is directed by a "sophisticated investor" as defined in Regulation 506(b)(2)(ii) under the Act.

Category H __ The undersigned is an entity (other than a trust) in which all of the equity owners are "accredited investors" within one or more of the above categories. If relying upon this Category alone, each equity owner must complete a separate copy of this Agreement. (describe entity)

_____

Category I __ The undersigned is not within any of the categories above and is therefore not an accredited investor.

The undersigned agrees that the undersigned will notify the Company at any time on or prior to the Closing Date in the event that the representations and warranties in this Agreement shall cease to be true, accurate and complete.

2. SUITABILITY (please answer each question)

(a) For an individual Subscriber, please describe your current employment, including the company by which you are employed and its principal business:

_____
_____
_____
_____

(b) For an individual Subscriber, please describe any college or graduate degrees held by you:

_____
_____
_____
_____

(c) For all Subscribers, please list types of prior investments:

_____
_____
_____
_____

(d) For all Subscribers, please state whether you have you participated in other private placements before:

YES ❒ NO ❒

(e) If your answer to question (d) above was "YES", please indicate frequency of such prior participation in private placements of:

	Public Companies	Private Companies	Public or Private Biotechnology Companies
Frequently	_____	_____	_____
Occasionally	_____	_____	_____
Never	_____	_____	_____

(f) For individual Subscribers, do you expect your current level of income to significantly decrease in the foreseeable future:

YES ❒ NO ❒

(g) For trust, corporate, partnership and other institutional Subscribers, do you expect your total assets to significantly decrease in the foreseeable future:

YES ❒ NO ❒

(h) For all Subscribers, do you have any other investments or contingent liabilities which you reasonably anticipate could cause you to need sudden cash requirements in excess of cash readily available to you:

YES ❒ NO ❒

(i) For all Subscribers, are you familiar with the risk aspects and the non-liquidity of investments such as the securities for which you seek to subscribe?

YES ❒ NO ❒

(j) For all Subscribers, do you understand that there is no guarantee of financial return on this investment and that you run the risk of losing your entire investment?

YES ❒ NO ❒

3. MANNER IN WHICH TITLE IS TO BE HELD. (circle one)

(a)	Individual Ownership
(b)	Community Property
(c)	Joint Tenant with Right of Survivorship (both parties must sign)
(d)	Partnership*
(e)	Tenants in Common
(f)	Company*
(g)	Trust*
(h)	Other

*If Preferred Stock are being subscribed for by an entity, the attached Certificate of Signatory must also be completed.

4. NASD AFFILIATION.

Are you affiliated or associated with an NASD member firm (please check one):

Yes ❒ No ❒

If Yes, please describe:

_____
_____
_____

*If Subscriber is a Registered Representative with an NASD member firm, have the following acknowledgment signed by the appropriate party:

The undersigned NASD member firm acknowledges receipt of the notice required by NASD Conduct Rule 3040 (a) and (b).

_____
Name of NASD Member Firm

By: _____
Authorized Officer

Date: _____

The undersigned is informed of the significance to the Company of the foregoing representations and answers contained in the Confidential Investor Questionnaire and such answers have been provided under the assumption that the Company will rely on them.

EXHIBIT B

WIRE INSTRUCTIONS

US BANK NATIONAL ASSOCIATION
COPORATION TRUST, ST. PAUL MINNESOTA

ABA#: [ ]
BNF: U.S. BANK, NA
ACCOUNT #: [ ]
Further Credit to: Nile Therapeutics, Inc.
SEI#: 117882000
Attention: Stefan Ronchetti
Tel: 651-495-2148
Fax: 651-495-8087
Ref: [Investor Name] *

* It is imperative that the investing entity is listed on the wire

Exhibit 10.13

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (this "Agreement") is entered into on August 10, 2007, between NILE THERAPEUTICS, INC. (the "Company"), and ALLAN GORDON, M.D. (the "Executive").

WHEREAS, the Executive was employed by the Company pursuant to an Employment Agreement, dated December 12, 2006 (the "Employment Agreement");

WHEREAS, the Executive resigned from the Company, effective May 21, 2007; and

WHEREAS, for the purposes of avoiding the uncertainty, expense and burden associated with any dispute, the Executive and the Company desire to resolve all issues that may arise by virtue of the previously existing employment relationship between the Executive and the Company, the termination of the employment relationship or the parties' respective rights under the Employment Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and provisions set forth below, it is agreed as follows:

1. The Executive hereby confirms his resignation as an officer, director and employee of the Company effective as of May 21, 2007 (the "Separation Date"). The Executive shall be entitled to receive within five days of the execution of this Agreement (i) his Base Salary (as defined in the Employment Agreement) through the Separation Date and (ii) $9,565, representing his accrued and unused vacation through the Separation Date. The Executive acknowledges and agrees that he will receive no additional compensation, payments or benefits from the Company except as specifically set forth herein.

2. In addition to the payments described in Section 1, the Company agrees to provide the Executive with the following benefits:

(a) The Executive shall be entitled to receive: (i) $300,000, representing his Base Salary; (ii) $120,000, representing his annual Performance Bonus; and (iii) $46,356.16, representing a *pro rata* portion of his annual Performance Bonus. All amounts payable representing Base Salary under this Section 2(a) shall be paid in accordance with the Company's regular payroll practices over a period of one year following the Separation Date and all amounts payable representing Performance Bonuses shall be paid in a single-lump sum in January 2008.

(b) The Company shall, upon presentation of appropriate vouchers therefor, reimburse the Executive for all unclaimed business expenses incurred by him in the performance of his duties for the Company through the Separation Date, in accordance with the Company's standard practices and procedures, but all such reimbursements shall be paid no later than December 31, 2008.

(c) The Company shall pay the Executive 12 monthly payments of $1,360.38 representing the cost of COBRA (Consolidated Omnibus Budget Reconciliation Act) premiums associated with his continued health insurance coverage on the same terms as existed prior to this Agreement. The Company shall make such payments whether or not the Executive elects or continues COBRA coverage.

(d) For a period of one-year following the Separation Date, the Company will continue to pay the premiums relating to personal life insurance coverage for the Executive in an amount equal to $1,000,000.

(e) The Company shall grant to the Executive, immediately after the closing of the next round of equity financing (the "Financing"), five-year stock options to purchase that number of shares representing two and one-half percent (2.5%) of the outstanding common stock of the Company, par value $.001 per share (the "Common Stock") on a fully diluted basis as of the closing of the Financing. The options shall be 100% vested and immediately exercisable and have an exercise price equal to the fair market value of a share of Common Stock on the date of grant. For purposes of this Agreement, "fully diluted basis" shall mean the number of shares of Common Stock that would be outstanding upon the conversion of all outstanding shares of preferred stock of the Company (the "Preferred Stock") outstanding on the date of the Financing, plus the shares of Common Stock issuable upon conversion or exercise, as the case may be, of all securities of the Company convertible into, exercisable for, or exchangeable for, directly or indirectly, shares of Common Stock, that are currently exercisable by the holder thereof or which will become exercisable within 90 days of the date of the Financing. The Executive shall have the right (the "Executive's Right") to include for resale the shares of Common Stock issuable upon exercise of the options granted pursuant to this Section 2(e) in a registration statement filed by the Company under the Securities Act of 1933, as amended, if and to the same extent as any such right to registration may in the future first be given to the persons that on the date hereof are holders of Common Stock (the "Other Registration Right"); provided, however, that the shares of Common Stock underlying the options granted pursuant to this Section 2(e) shall not be entitled to be included in any registration statement that may be filed by the Company with respect to securities issued in the Financing. The Executive's Right is conditioned upon the Executive's compliance with the terms and conditions of the Other Registration Right as if he was a party to any agreement which memorialized the terms and conditions thereof. The Executive's Right is personal to the Executive and shall not run with the shares of Common Stock issuable upon exercise of the options granted pursuant to this Section 2(e). If, as currently contemplated, the Financing consists of two steps, an equity capital raise followed by a merger with a subsidiary of a public shell corporation, the exercise price and number of fully diluted shares will be determined as of the close of the equity capital raise, without regard to the subsequent merger.

(f) The Company shall reimburse the Executive for up to $12,500 for legal fees he incurred in connection with the negotiation of this Agreement within 30 days after he submits appropriate documentation related to such fees provided that the Executive submits such documentation by November 30, 2008.

3. The Executive hereby ratifies and confirms, and agrees to continue to be bound by, the provisions of Section 6 (Confidential Information and Inventions) of the Employment Agreement (a copy of which is attached hereto as Exhibit A). In connection therewith, the Executive acknowledges that the Company would not make the payments and provide the benefits specified in Sections 1 and 2 hereof (other than the payment of the Executive's base salary through the Separation Date) without the Executive's agreement to continue to be bound by the provisions set forth in Section 6 of the Employment Agreement and, therefore, that in the event of a breach by the Executive of such provisions, the Company shall be entitled to cease making further payments under Sections 1 and 2 of this Agreement and to recover all amounts (other than the Executive's base salary through the Separation Date) previously paid to the Executive under such Sections 1 and 2. The Executive agrees, whether or not requested, to promptly return any and all copies of Confidential Information (as defined in the Employment Agreement), in whatever medium and form. In addition, the Executive agrees to refrain forever from using or disclosing the Company's Confidential Information for any reason unless he is required to do so by law or legal process. The Executive's obligations under this Section 3 will survive the expiration of this Agreement.

4. (a) The Executive agrees that he fully, finally and unconditionally and forever releases, discharges and forgives the Company, Two River Group Holdings, LLC and Riverbank Capital Securities, Inc., a member of the National Association of Broker Dealers (collectively, the "Nile Companies"), all of the Nile Companies' successors and assigns, and any and all of the Nile Companies' past and present members, partners, shareholders, officers, directors, managers, agents, representatives and employees in their capacity as such (the "Releasees"), from any and all claims, allegations, complaints, proceedings, charges, actions, causes of action, demands, debts, covenants, contracts, liabilities or damages of any nature whatsoever, whether now known or claimed, to whomever made, which the Executive had, has or may have against any or all of the Releasees for or by reason of any cause, nature or thing whatsoever, up to the effective date of this Agreement, known or unknown, including, by way of example and without limiting the broadest application of the foregoing, any actions, causes of action or claims under the Employment Agreement or any other contract or any federal, state or local decisional law, statutes, regulations or constitutions, any claims for notice or pay in lieu of notice, or for wrongful dismissal, discrimination, or harassment on the basis of any factor (including, without limitation, any claim pursuant to or arising under Title VII of the Civil Rights Act of 1964, as amended, the Employee Retirement Income and Security Act of 1974, as amended, the Americans with Disabilities Act, as amended, the Age Discrimination in Employment Act, as amended, the Family and Medical Leave Act, the New York State and City Human Rights Laws, the California Fair Employment and Housing Act and any other federal, state or local legislation concerning employment or employment discrimination), and any claims, asserted benefits or rights arising by or under contract or implied contract, any alleged oral or written contract or agreement for employment or services, any claims arising by or under promissory estoppel, detrimental reliance, or under any asserted covenant of good faith and fair dealing, and any claims for defamation, fraud, fraudulent inducement, intentional infliction of emotional distress, or any other tortious conduct, including personal injury of any nature and arising from any source or condition, or pursuant to any other applicable employment standards or human rights legislation, or for severance pay, salary, bonus, commission, incentive, equity or additional compensation, vacation pay, insurance or benefits. The Executive agrees that all prior agreements relating to the Executive's employment or service with the Company or any of its affiliates or the termination of such employment or service, including, without limitation, the Employment Agreement (other than Section 6 thereof), are hereby terminated as of the effective date of this Agreement and shall thereafter be of no further force or effect. Notwithstanding the foregoing, the Executive does not waive his rights under this Agreement, any rights to indemnification he may have and /or his rights to accrued benefits under the Company’s welfare plan.

(b) As of the date of, and upon execution of this Agreement and his waiver and release of all claims, the Executive covenants, represents and warrants that the Executive has not asserted and will not assert, threaten or commence any claim, allegation, action, complaint or proceeding against the Releasees or any of them by reason of any matter or thing existing up to the effective date of this Agreement specified in Section 14 hereof which is waived under the provisions of Section 4(a). If the Executive should, after the execution of the Agreement make, pursue, prosecute, or threaten to make any such claim or allegation, or pursue or commence or threaten to commence any such claim, action, complaint or proceeding against the Releasees, or any of them, for or by reason of any cause, matter or thing existing up to the effective date of this Agreement which is waived under the provisions of Section 4(a), this Agreement may be raised as, and shall constitute, a complete bar to any such claim, allegation, action, complaint or proceeding, and the Releasees shall be entitled to recover from the Executive all reasonable costs incurred by virtue of defending same, including reasonable attorneys' fees and expenses, without altering or diminishing the effectiveness of the release provisions provided under this subparagraph (b) and the preceding subparagraph (a). The Executive represents that, as of the date hereof, he has no knowledge of any basis for claims by him against any Releasee.

5. (a) The Executive shall not disparage the Nile Companies and any of their current or past officers, directors, members and shareholders (collectively, the "Nondisparagement Group") in any manner whether to the media, or otherwise, and the Executive shall not publish or make any statement which is reasonably foreseeable to become public with respect to any of the Nondisparagement Group. If the Executive shall violate the provisions of this Section 5(a), members of the Nondisparagement Group may appropriately publicly respond to such violation without being deemed to have violated the provisions of Section 5(b) hereof. The Executive agrees to keep the terms of this Agreement confidential except as required by law or as needed to enforce the terms of this Agreement.

(b) None of the Nondisparagement Group shall disparage the Executive in any manner whether to the media, or otherwise, and none of the Nondisparagement Group shall publish or make any statement which is reasonably foreseeable to become public with respect to the Executive. If any of the Nondisparagement Group should violate the provisions of this Section 5(b), Executive may appropriately publicly respond to such violation without being deemed to have violated the provisions of Section 5(a) hereof.

6. The Executive shall promptly return to the Company all files, records, keys, computers, credit cards or other Firm property still in the Executive's possession or under the Executive's control.

7. The Executive acknowledges that he has been advised, and been afforded an opportunity, to consult with an attorney prior to signing this Agreement and understands that any decision to consult or not to consult with an attorney was solely within the Executive's discretion. The Executive further acknowledges and agrees that by signing and returning this Agreement, he will be deemed to have consulted with an attorney for the purposes herein.

8. This Agreement shall not constitute an admission of any wrongdoing by the Releasees or any of them, or of having caused any injury to the Executive by any acts or omissions on the part of the Releasees or any of them, or a violation of any statutory, regulatory or common law obligation owed to the Executive by any of the Releasees.

9. This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes the Employment Agreement in its entirety, other than with respect to Section 6 thereof. If any provision of this Agreement is found to be invalid, unenforceable or void for any reason, such provision shall be severed from the Agreement and shall not affect the validity or enforceability of the remaining provisions. This Agreement may not be amended, modified or terminated except by express written agreement between the parties. This Agreement shall be construed and governed by the laws of the State of New York.

10. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, heirs (in the case of the Executive) and assigns. No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company except that such rights or obligations may be assigned or transferred pursuant to a merger or consolidation in which the Company is not the continuing entity, or the sale or liquidation of all or substantially all of the assets of the Company, provided that the assignee or transferee is the successor to all or substantially all of the assets of the Company and such assignee or transferee assumes the liabilities, obligations and duties of the Company, as contained in this Agreement, either contractually or as a matter of law. No rights or obligations of the Executive under this Agreement may be assigned or transferred by the Executive other than his rights to compensation and benefits, which may be transferred only by will or the laws of descent and distribution.

11. The Company shall be entitled to withhold from the benefits and payments described herein all income and employment taxes required to be withheld by applicable law.

12. Following the Separation Date, the Executive agrees to reasonably cooperate consistent with his other business and personal commitments in the Company's handling or resolution of any matter in which he was involved in the course of his employment. Promptly following submission of satisfactory documentation by the Executive, the Company shall reimburse the Executive for his out-of-pocket costs incurred in connection with his cooperation pursuant to this Section 12.

13. This Agreement may be executed in any number of separate counterparts, all of which taken together shall be deemed to constitute one and the same instrument.

14. The Executive acknowledges that he has been offered the opportunity to consider this Agreement for 21 days before executing it, although the Executive may accept it by execution at any time within such 21-day period. The Executive may revoke this Agreement in writing by sending notice of revocation to the Company at c/o Two River Group Holdings, LLC 689 Fifth Avenue, 12th Floor, New York, New York 10022, Attention: David Tanen, Secretary, within seven calendar days following its execution. This Agreement shall become effective seven days after its execution. The Executive's revocation of this Agreement shall not be considered a revocation of his resignation as an employee of the Company.

15. The Executive expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance of such specific waiver of Section 1542, which states as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with debtor."

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of the Releasees, the Executive expressly acknowledges that this Agreement is intended to include in its effect, without limitation, all claims which the Executive does not know or suspect to exist in his favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claim or claims.

IN WITNESS WHEREOF, the parties have caused this Separation Agreement and General Release to be duly executed as set forth below.

NILE THERAPEUTICS, INC.

By:/s/ Peter M. Strumph

Name: Mr. Peter M. Strumph
Title: Chief Executive Officer

EXECUTIVE

/s/ Allan Gordon

Name: Allan Gordon, M.D.

Exhibit 16.1

September 20, 2007

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Ladies and Gentlemen:

We are the former independent auditors for SMI Products, Inc. (the "Company"). We have read the Company's current report on Form 8-K, dated September 17, 2007, and are in agreement with the disclosure in Item 4.01, in so far as it pertains to our firm. We have no basis to agree or disagree with other statements of the Company contained therein.

Yours very truly,

"Paritz & Co., P.A."

PARITZ & CO., P.A.

Exhibit 23.1

Consent of Independent Auditor

We consent to the inclusion in this Current Report (Form 8-K) of Nile Therapeutics, Inc., filed with the Securities and Exchange Commission, of our report dated August 14, 2007, with respect to our audit of the financial statements of Nile Therapeutics, Inc., as of June 30, 2007 and for the period from August 1, 2005 through June 30, 2007, and for the six month period from January 1, 2007 through June 30, 2007.

/s/Hays & Company, LLP

New York, N.Y.
September 21, 2007

Nile Therapeutics, Inc. Completes $20 Million Financing and Reverse Merger with SMI Products, Inc.

Private offering provides new funding as Nile Therapeutics, Inc. becomes a publicly reporting company.

BERKELEY, Calif., Sept. 18 -- Nile Therapeutics, Inc. ("Nile"), a biopharmaceutical company focused on developing therapies for cardiovascular disease, announced the successful completion of its merger with SMI Products, Inc. ("SMI") and its transition to a publicly reporting company. Until Nile receives its new ticker symbol, shares of its common stock will continue to trade under the ticker symbol "SPDU.OB".

As previously announced, on August 15, 2007, Nile, Nile Merger Sub, Inc. and SMI entered into a merger agreement that called for Nile to acquire Nile Merger Sub, Inc. in a statutory merger, with Nile becoming the wholly-owned subsidiary of SMI. This merger was completed on September 17, 2007. Immediately thereafter, Nile merged with and into SMI, and SMI changed its name to Nile Therapeutics, Inc.

Prior to the completion of the merger, Nile raised approximately $20 million through the private sale of approximately 7 million shares of common stock to new and existing investors. The financing syndicate, which was led by Wexford Capital LLC, also included RIT Capital Partners, plc, Life Science Capital Master Fund, and other select institutional and qualified investors. Following the closing of the financing Nile appointed Dr. Paul A. Mieyal of Wexford Capital, to serve as a member of Nile's Board of Directors. Riverbank Capital Securities, Inc., an NASD member broker dealer, acted as placement agent in connection with the financing.

The proceeds from the financing will be used to fund further development of Nile's pipeline, which includes its lead compound, CD-NP, a natriuretic peptide being developed to treat heart failure, and 2NTX-99, a pre-clinical small molecule with nitric oxide (NO) donating properties.

CD-NP, a novel chimeric natriuretic peptide in Phase I clinical studies for the treatment of heart failure, is a selective NPRB agonist which, in vivo, has been shown to have potent renal enhancement and cardiac unloading properties but with minimal hypotensive effects compared with competitive products. CD-NP is a rationally-designed synthetic peptide designed to incorporate favorable properties of naturally occurring natriuretic peptides. Data from Nile's recently completed Phase Ia study in healthy volunteers confirmed several pre-clinical findings, including that CD-NP activated its target receptor in humans, preserved renal function and caused increases in natriuresis and diuresis at doses associated with a minimal effect on mean arterial pressure. Nile believes that CD-NP could provide a valuable new treatment option for heart failure patients.

2NTX-99 is a novel small molecule that has been shown in vivo and in vitro to inhibit the synthesis and action of thromboxane (TXA2), enhance the production of prostacyclin (PGI2) and supply a pharmacological amount of nitric oxide (NO) to the vasculature. Nile believes that the unique activity profile of 2NTX-99 has potential utility in a range of atherosclerotic, thrombotic and microvascular diseases.

"The successful financing and merger leaves Nile with a strong balance sheet and corporate structure." said Peter Strumph, CEO of Nile Therapeutics, Inc. "This infusion of capital is a validation of our management team, our focused clinical development strategy, our pipeline, and the unmet need which exists for the treatment of patients with heart failure. Nile's lead compound CD-NP has recently completed its first clinical study in healthy volunteers and will soon be tested in heart failure patients in several clinical studies planned to begin before the end of the year."

The securities sold in the recent private offering have not been registered under the Securities Act of 1933 and may not be resold absent registration under or exemption from such Act. Nile has agreed to file with the Securities and Exchange Commission a registration statement for the resale of the securities held by the investors in the offering by November 10, 2007. This press release shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

About Nile Therapeutics.

Nile Therapeutics, Inc. is a clinical-stage biopharmaceutical company that develops innovative products for the treatment of cardiovascular disease and other areas of unmet medical need. Nile is initially focusing its efforts on developing its lead compound, CD-NP, a novel chimeric peptide in Phase I studies for the treatment of heart failure and 2NTX-99, a small molecule, pre- clinical, anti-atherothrombotic agent with nitric oxide donating properties. A key component of the Company's strategy is to acquire the global rights to additional compounds to expand its portfolio. More information on Nile can be found at www.nilethera.com.

Contact:
Daron Evans
Chief Financial Officer
Nile Therapeutics, Inc.
510-281-7700
info@nilethera.com

To the extent that statements in this press release are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of Nile's product development, events conditioned on stockholder or other approval, or otherwise as to future events, all such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Examples of the risks and uncertainties include, but are not limited to: the risk that we may not successfully develop and market our products, and even if we do, we may not become profitable; risks relating to the progress of our research and development; risks relating to the rigorous regulatory approval process required for any products that we may develop independently, with our development partners or in connection with our collaboration arrangements; the risk that changes in the national or international political and regulatory environment may make it more difficult to gain U.S. Food and Drug Administration, or FDA or other regulatory approval of our drug product candidates; risks that the FDA or other regulatory authorities may not accept any applications we file; risks that the FDA or other regulatory authorities may withhold or delay consideration of any applications that we file or limit such applications to particular indications or apply other label limitations; risks that, after acceptance and review of applications that we file, the FDA or other regulatory authorities will not approve the marketing and sale of our drug product candidates; risks relating to our own drug manufacturing operations and the drug manufacturing operations of our third-party suppliers and contract manufacturers; risks relating to the ability of our development partners and third-party suppliers of materials, drug substance and related components to provide us with adequate supplies and expertise to support manufacture of drug product for initiation and completion of our clinical studies; risks relating to the transfer of our manufacturing technology to third-party contract manufacturers, and the risk that recurring losses, negative cash flows and the inability to raise additional capital could threaten our ability to continue as a going concern.

Pharmaceutical and biotechnology companies have suffered significant setbacks in advanced clinical trials, even after obtaining promising earlier trial results. Data obtained from such clinical trials are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. Except to the extent required by applicable laws or rules, we do not undertake to update any forward-looking statements or to publicly announce revisions to any of our forward-looking statements, whether resulting from new information, future events or otherwise.

Exhibit 99.2

NILE THERAPEUTICS, INC.
(a development stage company)

FINANCIAL STATEMENTS

PERIOD FROM AUGUST 1, 2005 (INCEPTION)
TO JUNE 30, 2007

NILE THERAPEUTICS, INC.
(a development stage company)

FINANCIAL STATEMENTS

PERIOD FROM AUGUST 1, 2005 (INCEPTION)
TO JUNE 30, 2007

CONTENTS

Hays & Company LLP

CERTIFIED PUBLIC ACCOUNTANTS
Globally: MOORE STEPHENS HAYS LLP

To the Stockholders
Nile Therapeutics, Inc.

INDEPENDENT AUDITOR'S REPORT

We have audited the accompanying balance sheet of Nile Therapeutics, Inc. (a development stage company) (the "Company") as of June 30, 2007, the related statements of operations, changes in stockholders' equity (deficit), and cash flows for the six months ended June 30, 2007 and the period from August 1, 2005 (inception) through June 30, 2007. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Nile Therapeutics, Inc. (a development stage company) as of June 30, 2007, and the results of its operations and its cash flows for the six months ended June 30, 2007 and for the period from August 1, 2005 (inception) to June 30, 2007 in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has incurred a significant working capital deficiency and recurring losses from operations that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Hays & Company LLP

August 14, 2007
New York, New York

NILE THERAPEUTICS, INC.
(a development stage company)

BALANCE SHEET

JUNE 30, 2007

ASSETS		
Current assets		
Cash and cash equivalents	$	165,194
Note receivable - employee, current portion		15,559
Prepaid expenses		26,760
		207,513
Property and equipment, net of accumulated depreciation of $4,774		59,674
Note receivable - employee, net of current portion		31,117
Intangible assets, net of accumulated amortization of $1,807		41,511
Deposits		33,400
	$	373,215
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable and accrued expenses	$	804,313
Accrued interest - convertible notes payable		302,466
Due to related party		84,109
		1,190,888
Convertible notes payable		4,000,000
		5,190,888
Commitments and contingencies		
(Notes 1, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12)		
Stockholders' equity (deficit)		
Common stock, $.001 par value; 25,000,000 shares authorized, 5,000,000 issued and outstanding		5,000
Additional paid-in capital		7,167
Deficit accumulated during the development stage		(4,829,840)
		(4,817,673)
	$	373,215

The accompanying notes are an integral part of these financial statements.

NILE THERAPEUTICS, INC.
(a development stage company)

STATEMENTS OF OPERATIONS

	Six months ended June 30, 2007	Period from August , 205 (inception) through June 30, 2007
Revenues	$ -	$ 380,835
Grant income		
Operating expenses		
Research and development	1,421,277	4,310,683
General and administrative	721,496	901,353
	2,142,773	5,032,036
Loss from operations	(2,142,773)	(4,651,201)
Interest income	23,962	123,827
Interest expense	(119,014)	(302,466)
Net loss	$ (2,237,825)	$ (4,829,840)

The accompanying notes are an integral part of these financial statements.

NILE THERAPEUTICS, INC.
(a development stage company)

STATEMENT OF STOCKHOLDERS' EQUITY (DEFICIT)

PERIOD FROM AUGUST 1, 2005 (INCEPTION)
TO JUNE 30, 2007

	Common Stock				
	Shares	Amount	Additional paid-incapital	Deficit accumulated during the development stage	Total
Issuance of common stock to founders at $0.001 per share	5,000,000	$ 5,000	$ -	$ -	$ 5,000
Founders' shares returned to treasury	(500,000)	-	-	-	-
Issuance of common stock to licensor at $0.001 per share	500,000	-	500		500
Issuance of stock options for services at $0.25	-	-	10,000	-	10,000
Net loss, period from August 1, 2005 (inception) to December 31, 2006	-	-	-	(2,592,015)	(2,592,015)
Balance at December 31, 2006	5,000,000	5,000	10,500	(2,592,015)	(2,576,515)
Net loss, period from January 1, 2007 to June 30, 2007	-	-	-	(2,237,825)	(2,237,825)
Cancellation of stock options issued in 2006 at $0.25	-	-	(3,333)	-	(3,333)
Balance at June 30, 2007	5,000,000	$ 5,000	$ 7,167	$ (4,829,840)	$ (4,817,673)

The accompanying notes are an integral part of these financial statements.

NILE THERAPEUTICS, INC.
(a development stage company)

STATEMENTS OF CASH FLOWS

	Six months ended June 30, 2007	Period from August 1, 2005 (inception) through June 30, 2007
Cash flows from operating activities		
Net loss	$ (2,237,825)	$ (4,829,840)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	6,227	6,581
Stock based compensation	(3,333)	7,167
Changes in operating assets and liabilities		
Increase in prepaid expenses	(27,760)	(27,760)
Increase in deposits	(18,400)	(33,400)
Increase in accounts payable and accrued expenses	326,200	804,313
Increase in accrued interest - notes payable	119,014	302,466
Increase in due to related party	78,280	84,109
Net cash used in operating activities	(1,756,597)	(3,685,364)
Cash flows from investing activities		
Purchase of property and equipment	(47,585)	(64,448)
Investment in notes receivable - employee	(46,676)	(46,676)
Cash paid for intangible assets	(6,183)	(43,318)
Net cash used in investing activities	(100,444)	(154,442)
Cash flows from financing activities		
Proceeds from sale of common stock	-	5,000
Proceeds from sale of convertible notes payable	-	4,000,000
Net cash provided by financing activities	-	4,005,000
Net (decrease) increase in cash and cash equivalents	(1,857,041)	165,194
Cash and cash equivalents, beginning of period	2,022,235	-
Cash and cash equivalents, end of period	$ 165,194	$ 165,194

The accompanying notes are an integral part of these financial statements.

NILE THERAPEUTICS, INC.
(a development stage company)

NOTES TO FINANCIAL STATEMENTS

PERIOD FROM AUGUST 1, 2005 (INCEPTION)
TO JUNE 30, 2007

1 Organization and business activities

The Company

Nile Therapeutics, Inc. (the "Company"), a Delaware corporation, was incorporated on August 1,2005. The Company is a biopharmaceutical company that develops and commercializes innovative products for the treatment of important unmet medical needs, including without limitation, in cardiovascular disease. The Company is initially focusing its efforts on developing, testing and commercializing its lead compound, known as CD-NP, for the treatment of heart failure.

The Company's primary activities since incorporation have been organizational; including recruiting personnel, establishing office facilities, acquiring a technology license, performing business and financial planning, conducting research and development activities and raising capital and have not generated any revenues other than certain grants. Accordingly, the Company is considered to be in the development stage.

Going concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. The Company has incurred a significant working capital deficiency and recurring losses from operations that raise substantial doubt about its ability to continue as a going concern. Management's plans with regard to this uncertainty are discussed below.

On July 19, 2007, the Company entered into a Confidential Term Sheet with SMI Products, Inc., a Delaware corporation ("SMI") pursuant to which the Company will enter into a Merger Agreement with SMI and its wholly-owned subsidiary, Nile Merger Sub, Inc., also a Delaware corporation, pursuant to which Nile Merger Sub, Inc. shall be merged with and into the Company (the "Merger"), the separate corporate existence of Nile Merger Sub, Inc. shall cease and the Company shall continue as the surviving corporation and shall become a wholly-owned subsidiary of SMI. SMI is subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, and is publicly traded on the OTC Bulletin Board. SMI does not operate any business.

As a condition of the Merger, the Company must obtain gross proceeds from an equity financing equal to at least $15,000,000 (the "Financing"). As discussed in Note 5, upon the closing of the Financing, the outstanding balance of the Notes will automatically convert into shares of the Company's common stock. The Company expects to use the proceeds from the Financing to satisfy its current outstanding obligations, including the Promissory Note discussed in Note 12, and to provide sufficient funds in order to continue its business plan over the next year or more. Management can provide no assurances that the Company will be able to raise sufficient funds in order to complete the Merger or satisfy its current outstanding obligations. The accompanying financial statements do not include any adjustments that might result from this uncertainty.

At the effective time of the Merger, each of the Company's then issued and outstanding shares of common stock, including shares purchased in the Financing, will be exchanged for shares of SMI common stock, $0.001 par value per share, so that, after giving effect to the Merger, the holders of the Company's common stock on a fully-diluted basis, will hold approximately 95% of the issued and outstanding shares of SMI common stock and holders of SMI common stock immediately prior to the Merger shall hold approximately 5% of the outstanding shares of SMI common stock on a fully-diluted basis. All outstanding warrants, options and other rights to purchase or acquire shares of the Company's common stock outstanding immediately prior to the Merger shall convert into to the right to purchase that number of shares of SMI common stock at the exchange ratio at adjusted exercise prices.

Upon completion of the Merger, SMI will adopt and continue implementing the Company's business plan. Further, upon completion of the Merger, the current officers and directors of SMI will resign and the current officers and directors of the Company will be appointed officers and directors of SMI. For accounting purposes, the Merger will be accounted for as an acquisition of SMI and recapitalization of the Company with the Company as the accounting acquirer (legal acquiree) and SMI as the accounting acquiree (legal acquirer). Also at the effective date of the Merger, the Company will pay to Fountainhead Capital Partners Limited ("Fountainhead") a consulting fee of $500,000 for their work in connection with the Merger. Fountainhead holds approximately 73.5% of SMI's issued and outstanding common shares and also holds various convertible promissory notes from SMI in the aggregate amount of $165,901. These convertible promissory notes by Fountainhead will convert into shares of SMI common stock as a condition to the Merger.

As a result of the Merger, the Company expects to incur increased operating costs primarily related to public company regulatory compliance.

2 Significant accounting policies

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and reported amounts of revenue and expenses during the reporting period. Accordingly, actual results could differ from those estimates.

Cash and cash equivalents

For purposes of the statement of cash flows, cash equivalents include time deposits, money market accounts, and all highly liquid debt instruments with original maturities of three months or less. The Company maintains cash in bank deposit accounts which, at times, exceed federally insured limits. The Company has not experienced any losses on these accounts.

Property and equipment

Property and equipment, which consists principally of furnishings and fixtures and computer and related equipment, are stated at cost. Maintenance and repairs are charged to expense as incurred. Additions, improvements and replacements are capitalized.

Depreciation of property and equipment is provided for by the straight line method over the estimated useful lives of the related assets which are five to seven years for furnishings and fixtures and three years for computer and related equipment.

Intangible assets

Intangible assets consist of costs related to acquiring patents and are amortized over the estimated patent life. Pending patent applications will be amortized when the patents are issued.

Impairment of long lived assets

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. An asset is considered to be impaired when the sum of the undiscounted future net cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount. The amount of impairment loss, if any, is measured as the difference between the net book value of the asset and its estimated fair value.

Grant revenue

Grant revenue is recorded when funding is received and qualifying expenses are incurred.

Research and development

Research and development costs are expensed as incurred. Clinical trial costs incurred by third parties are expensed as the contracted work is performed. Where contingent milestone payments are due to third parties under research and development arrangements, the milestone payment obligations are expensed when the milestone results are achieved.

Income taxes

In accordance with Statement of Financial Accounting Standards ("SFAS") No. 109, Accounting for Income Taxes, deferred tax assets and liabilities are recognized based on temporary differences between the financial statement and the tax bases of assets and liabilities. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which these assets and liabilities are expected to be recovered or settled. The Company provides a valuation allowance when it appears more likely than not that some or all of the net deferred tax assets will not be realized.

Share based payments

Effective August 2005, the Company adopted Statement of Financial Accounting Standards No. 123R, Share-Based Payment, ("SFAS 123R"). SFAS 123R requires the recognition of stock-based compensation expense in the financial statements. The terms and vesting schedules for share-based awards vary by type of grant and the employment status of the grantee. Generally, the awards vest based upon time-based or performance-based conditions. Performance-based vesting conditions generally include the attainment of goals related to the Company's financial and development performance.

3 License agreement

In January 2006 the Company entered into an exclusive, worldwide, royalty bearing license agreement (the "License Agreement") with Mayo Foundation for Medical Education and Research ("Mayo"), including the right to grant sublicenses, for the rights to intellectual property and know-how relating to CD-NP, a chimeric natriuretic peptide, for all therapeutic uses. Under the terms of the License Agreement, the Company paid Mayo an up-front cash payment and reimbursed it for past patent expenses. In addition, the Company issued to Mayo 500,000 shares of its common stock. The Company is also required to make performance-based cash payments upon successful completion of clinical and regulatory milestones relating to CD-NP. The Company will not owe any milestone payment to Mayo until the first patient is dosed in the first Company sponsored Phase II clinical trial of its lead product in the U.S. The Company has also agreed to pay Mayo milestone payments upon the receipt of regulatory approval for each additional indication of CD-NP, as well as for additional compounds or analogues contained in the intellectual property.

In addition to the potential milestone payments discussed above, the License Agreement requires the Company to issue common shares to Mayo for an equivalent dollar amount of grants received in excess of $300,000, but not exceeding $575,000. The shares are to be issued upon the completion of an additional equity financing completed by the Company. For the period from August 1, 2005 (inception) through June 30, 2007, the Company received $380,835 in grant income. Accordingly, the Company has recorded a liability of $80,835 in the accompanying financial statements in connection with this obligation. On July 3, 2007, the Company received an additional $101,400 of grant revenue and will be required to issue shares of an equivalent dollar amount upon the completion of an additional equity financing.

Under the License Agreement, the Company is also obligated to pay Mayo royalty payments based on sales of licensed products, as defined.

4 Note receivable - employee

In January 2007, the Company advanced $46,676 to one of its executive employees and issued a promissory note which accrues interest at a rate of 4.75% per annum and matures in February 2010. The note requires three equal annual installment re-payments due from the future performance bonuses earned by the executive.

5 Convertible notes payable

During March 2006, the Company completed a private placement offering for $4,000,000 aggregate principal amount of 6% convertible promissory notes (the "Notes") due on March 28, 2008.

The Notes are unsecured obligations convertible into the Company's common stock. Interest on the Notes accrues at 6% per year and is payable in full on maturity. The Notes mandatorily convert upon the closing of the Company's next equity financing ("Subsequent Financing") in which the Company sells newly-issued shares of its equity securities or securities convertible into equity securities, of one or more series (the "Equity Securities") for cash proceeds of $5,000,000 or more. At conversion, the outstanding principal and accrued but unpaid interest shall automatically convert into validly issued, fully paid and non-assessable Equity Securities of the same kind issued in the Subsequent Financing at a conversion price equal to 90% of the per share or unit purchase price of the Subsequent Financing.

In addition, upon conversion, the Company shall issue warrants entitling the holder to purchase, for a period of five years from the effective date of the conversion, a number of shares of common stock of the Company computed by dividing 10% of the principal amount of the Note by either (a) the price per share paid by investors in the Subsequent Financing or (b) if a Subsequent Financing does not occur on or before the maturity date, the price per share paid by the most recent investor in the common stock of the Company.

At June 30, 2007, $302,466 in interest has been accrued on the Notes.

6 Stockholder's equity

In August 2005, the Company issued 5,000,000 shares of common stock to its founders for $5,000 or $0.001 per share. The founders subsequently returned 500,000 of these shares to the Company for issuance to the licensor.

In January 2006, the Company issued 500,000 shares of common stock to its licensor in accordance with the terms of the License Agreement. The fair value of the shares at the time of issuance was estimated by management to be $0.001 and the Company recorded $500 of stock based compensation which has been charged to research and development expense.

As discussed in Note 3, the Company is obligated to issue shares of common stock to Mayo equal to $80,835 upon completion of additional equity financing by the Company.

7 Stock based compensation

In 2005, the Company established a stock option plan (the "Plan") under which incentives may be granted to officers, employees, directors, consultants and advisors. Incentives under the Plan may be granted in any one or a combination of the following forms: (a) incentive stock options and non-statutory stock options; (b) stock appreciation rights; (c) stock awards; (d) restricted stock; and (e) performance shares. The number of shares of common stock, which may be issued under the Plan, shall not exceed 1,500,000. Since inception, the Company granted a total of 75,000 stock options to advisors with an exercise price of $0.25 per share, of which, 25,000 were subsequently canceled during the six months ended June 30, 2007.

The stock-based compensation expense in connection with stock option grants amounted to $6,667 for the period from August 1, 2005 (inception) to June 30, 2007 and is included in research and development expense.

The fair value of each stock option granted has been determined using the Black-Scholes model. The material factors incorporated in the Black-Scholes model in estimating the value of the options reflected in the following table include:

Risk-free interest rate	4.70 %
Volatility	62.67 %
Estimated life in years	4 years
Dividends paid	None

A summary of option activity under the Plan since inception and changes during the period from December 31, 2006 to June 30, 2007 is as follows:

Options	Shares	Weighted-Average Exercise Price
2006 and prior		
Options granted	75,000	$ 0.25
Options exercised	-	$ -
Outstanding at December 31, 2006	75,000	$ 0.25
Exercisable at December 31, 2006	75,000	$ 0.25
2007		
Options granted	-	$ -
Options exercised	-	$ -
Options cancelled	(25,000)	$ 0.25
Outstanding at June 30, 2007	50,000	$ 0.25
Exercisable at June 30, 2007	50,000	$ 0.25

As of June 30, 2007, the aggregate fair value of options outstanding was $6,667, with a weighted-average remaining term of two years. The aggregate fair value of stock options exercisable at that same date was $6,667, with a weighted-average remaining term of two years. As of June 30, 2007, the Company has 1,450,000 shares available for future stock option grants.

As discussed in Note 6, the Company recorded stock based compensation expense of $500 during 2006 in connection with the issuance of 500,000 shares of common stock to the licensor.

Immediately following the closing of the Financing as discussed in Note 1, the Company will grant stock options (the "Employment Options") to its Chief Executive Officer ("CEO") pursuant to the Plan to purchase that number of shares representing 4% of the Company's outstanding common stock on a fully diluted basis as of the grant date. The Employment Options shall vest, if at all, and become exercisable in three equal installments on the day before each anniversary of the CEO's employment agreement. At the same time, the Company will grant to its CEO performance-based stock options (the "Performance Options") to purchase up to that number of shares representing 3.6% of the Company's outstanding common stock on a fully diluted basis as of the grant date. A pro-rata portion of the Performance Options shall vest, if at all, and become exercisable upon the successful completion of annual corporate and individual milestones.

Also immediately following the closing of the Financing as discussed in Note 1, the Company will grant Employment Options to its Chief Operating Officer ("COO") pursuant to the Plan to purchase that number of shares representing 1% of the Company's outstanding common stock on a fully diluted basis as of the grant date. The Employment Options shall vest, if at all, and become exercisable in three equal installments on the day before each anniversary of the COO's employment agreement. At the same time, the Company will grant to its COO Performance Options to purchase up to that number of shares representing 1.2% of the Company's outstanding common stock on a fully diluted basis as of the grant date. A pro-rata portion of the Performance Options shall vest, if at all, and become exercisable upon the successful completion of annual corporate and individual milestones.

8 Pension plan

On April 1, 2007 the Company established a defined contribution 401(k) plan (the "401(k) Plan") for the benefit of its employees. Substantially all of the employees of the Company are eligible to participate in the 401 (k) Plan which permits employees to make voluntary contributions up to the dollar limit allowed under the Internal Revenue Code. The 401 (k) Plan also provides for matching contributions by the Company of up to a combined total of 3% of an employee's annual compensation. The Company has recorded $773 of matching contributions for the six months ended June 30, 2007

9 Related parties

From time-to-time, some of the Company's expenses are paid for by Two River Group Holdings, LLC, ("Two River"), a company owned by several of the Company's founders. The Company reimburses Two River for these expenses and no interest is charged on the outstanding balance. For six months ended June 30, 2007, reimbursable expenses amounted to $83,133. At June 30, 2007, $84,109 is unpaid.

The Company utilized the services of Riverbank Capital Securities, Inc., ("Riverbank"), an entity owned by several of the Company's officers, directors and founders, for investment banking and other investment advisory services in connection with the Company's private placement issuance of the Notes. Riverbank did not charge any fees to the Company in connection with this private placement.

The financial condition and results of operations of the Company, as reported, are not necessarily indicative of results that would have been reported had the Company operated completely independently.

10 Income taxes

At December 31, 2006, the Company has federal tax net operating loss and credit carry forwards of approximately $2,580,000. During the six months ended June 30, 2007, the Company has generated an additional estimated net operating loss and credit carry forward of approximately $1,828,000. The federal net operating loss and credit carry forwards will begin to expire in 2026, unless previously utilized. Pursuant to Internal Revenue Code Sections 382 and 383, use of the Company's net operating loss and credit carry forwards may be limited if a cumulative change in ownership of more than 50% occurs within a three-year period. No assessment has been made as to whether such a change in ownership has occurred.

Significant components of the Company's net deferred tax assets at June 30, 2007 are shown below. A valuation allowance of $1,899,000 has been established to offset the net deferred tax asset at June 30, 2007, as realization of such assets is uncertain.

Noncurrent net operating loss carry forwards	$	1,895,000
Other noncurrent		4,000
Total noncurrent		1,899,000
Other current		-
Total deferred tax assets		1,899,000
Deferred tax valuation allowance		(1,899,000)
Net deferred taxes-	$	-

11 Commitments and contingencies

The Company is obligated under noncancelable operating leases for office space and office equipment expiring in April 2010. The aggregate minimum future payments under the leases are payable as follows:

Year ending December 31,		
2007 (six month period)	$	38,786
2008		79,437
2009		82,233
2010		27,722
	$	228,178

Rent expense charged to operations, including escalation charges for real estate taxes and other expenses, amounted to $14,524 for the six months ended June 30, 2007.

The Company has entered into various contracts with third parties in connection with the development of the licensed technology as described in Note 3. Future minimum commitments under these agreements amounted to approximately $256,000 at June 30, 2007 and are scheduled to be incurred during the next year.

The Company has entered into various agreements with third party consultants which expire at various dates through 2008 for which the Company is obligated to pay for services based upon hourly rates or completion of services as defined.

As of June 30, 2007 the Company has two employment agreements with executives expiring through June 2010. The agreements provide for base salaries plus additional incentive compensation, as defined.

Future minimum commitments under this agreement as of June 30, 2007 are as follows:

Year ending December 31,		
2007 (six month period)	$	242,500
2008		485,000
2009		485,000
2010		151,042
	$	1,363,542

A former executive of the Company terminated his employment agreement with the Company on May 21, 2007. On August 10, 2007, the Company entered into a Separation Agreement and General Release (the "Separation Agreement") with the executive. Pursuant to the terms of the Separation Agreement, the Company will continue to pay the executive's base salary, performance bonus and benefits until May 21, 2008. In addition, the Company will grant stock options to purchase a number of shares of the Company's common stock immediately following the closing of the Financing. The Company will also provide the executive with limited "piggy¬back" registration rights and will reimburse him for attorney's fees in an amount up to $12,500. In addition, the parties agree to release each other from any claims arising out of the executive's employment with the Company.

In the normal course of business, the Company enters into contracts that contain a variety of indemnifications with its employees, licensors, suppliers and service providers. Further, the Company indemnifies its directors and officers who are, or were, serving at the Company's request in such capacities. The Company's maximum exposure under these arrangements is unknown as of June 30, 2007. The Company does not anticipate recognizing any significant losses relating to these arrangements.

12 Subsequent events

On July 24, 2007, the Company issued an 8% Promissory Note to an investor in the aggregate amount of $1,500,000. This Promissory Note matures on the November 24, 2007. The Company also paid the investor a $30,000 fee at closing, which was netted from the gross proceeds.

On July 19, 2007, the Company signed a non-binding letter of intent to enter into an additional license agreement relating to certain intellectual property. Pursuant to the letter of intent, the Company would acquire the worldwide, exclusive rights to research, develop and commercialize a novel therapeutic technology. If this transaction is completed, the Company would be required to (a) pay an initial license fee, (b) reimburse the licensor for past patent expenses and (c) issue to the licensor a number of shares of common stock.

In addition, the Company would be obligated to make additional cash payments upon the successful completion of clinical, regulatory and commercial milestones. If the Company is able to obtain regulatory approval in the U.S., Europe and Japan and to thereafter make substantial sales of licensed product(s), such milestone payments could be significant.

The Company would also be obligated to pay the licensor royalty payments based on sales of the licensed product(s).

Upon completion of the license agreement, the Company may also pay to certain employees of Two River a cash finder's fee and issue them warrants to purchase the Company's common stock exercisable at fair market value.