

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-K

Annual report pursuant to section 13 and 15(d)

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### FILER

#### GENOMIC HEALTH INC

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**Form 10-K**

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(Mark One)

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

For the fiscal year ended: December 31, 2006

OR

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

For the transition period from to .

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Commission File Number: 000-51541

**GENOMIC HEALTH, INC.**

*(Exact name of Registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of incorporation or organization)*

**301 Penobscot Drive  
Redwood City, California**

*(Address of principal executive offices)*

**77-0552594**

*(I.R.S. Employer Identification Number)*

**94063**

*(Zip Code)*

**(650) 556-9300**

*(Registrant's telephone number, including area code)*

**Securities registered pursuant to Section 12(b) of the Act:**

**Title of Each Class**  
**Common Stock**

**Name of Each Exchange on Which Registered:**  
**The NASDAQ Stock Market LLC**

**Securities registered pursuant to Section 12(g) of the Act and Title of Class:**

**None**

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

As of June 30, 2006, the aggregate market value of voting and non-voting common stock held by non-affiliates of the registrant was approximately \$288.5 million, based on the closing price of the common stock as reported on the NASDAQ Global Market for that date.

There were 24,563,212 shares of the registrant's Common Stock issued and outstanding on February 28, 2007.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Items 10 (as to directors and Section 16(a) Beneficial Ownership Reporting Compliance), 11, 12, 13 and 14 of Part III incorporate by reference information from the registrant's proxy statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for the registrant's 2007 Annual Meeting of Stockholders to be held on June 12, 2007.

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## PART I

### ITEM 1. *Business.*

*This Report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. When used in this Report, the words “expects,” “anticipates,” “intends,” “estimates,” “plans,” “believes,” and similar expressions are intended to identify forward-looking statements. These are statements that relate to future periods and include statements about our expectation that, for the foreseeable future, substantially all of our revenues will be derived from Oncotype DX; the factors we believe to be driving demand for Oncotype DX and our ability to sustain such demand; our expectation that our research and development expense levels will remain high as we seek to enhance Oncotype DX and develop new tests; our expectation that our general and administrative and sales and marketing expenses will increase and our anticipated uses of those funds; our expectations regarding capital expenditures; the factors that may impact our financial results; the extent and duration of our net losses; our ability to comply with the requirements of being a public company; our ability to attract and retain experienced personnel; the impact changes in healthcare policy or regulation could have on our business; the adequacy of our product liability insurance; our ability to recognize revenues other than on a cash basis and when we expect we will recognize a majority of revenues upon providing tests; the level of investment in our sales force; the capacity of our commercial laboratory to process tests and our expected expanded capacity; our dependence on collaborative relationships and the success of those relationships; whether any tests will result from our collaborations; our belief that clinical results support our development of a test for colon cancer; the applicability of clinical results to actual outcomes; our estimates and assumptions with respect to disease incidence; the ability of our test to impact treatment decisions; the economic benefits of our test to the healthcare system, our compliance with federal, state and foreign regulatory requirements; our expectation that product revenues will increase; how we intend to spend our existing cash and cash equivalents and how long we expect our existing cash to last; our expected future sources of cash; our plans to borrow additional amounts under existing or new financing arrangements; the potential impact resulting from the regulation of Oncotype DX by the U.S. Food and Drug Administration, or FDA, and our belief that Oncotype DX is properly regulated under the Clinical Laboratory Improvement Amendments of 1988, or CLIA; our beliefs regarding reimbursement for Medicare inpatients; our plans to pursue reimbursement on a case-by-case basis; our ability, and expectations as to the amount of time it will take, to achieve successful reimbursement from third-party payors and government insurance programs; our intent to enter into additional foreign distribution arrangements; the factors that we believe will drive the establishment of coverage policies; the impact of changing interest rates; the amount of future revenues that we may derive from Medicare patients or categories of patients; increases in patient and physician demand resulting from our direct sales approach; plans for enhancements of Oncotype DX to address different patient populations of breast cancer or to report single gene results; plans for, and the timeframe for the development and commercial launch of, future tests addressing multiple cancers; our expectation regarding when we may move another potential test into development; the outcome or success of clinical trials; our intellectual property and our strategies regarding filing additional patent applications to strengthen our intellectual property rights; the impact of accounting pronouncements and our critical accounting policies, estimates, models and assumptions on our financial results; our anticipated cash needs and our estimates regarding our capital requirements and our needs for additional financing; and anticipated trends and challenges in our business and the markets in which we operate.*

*Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those expected. These risks and uncertainties include, but are not limited to, those risks discussed in Item 1A of this report, as well as our ability to develop and commercialize new products; the risk of unanticipated delays in research and development efforts; the risk that we may not obtain reimbursement for our existing test and any future tests we may develop; the risks and uncertainties associated with the regulation of our test by FDA; the ability to compete against third parties; our ability to obtain capital when needed; and our history of operating losses. These forward-looking statements speak only as of the date hereof. The Company expressly disclaims any obligation or undertaking to update to any forward-looking statements contained herein to reflect any change in the Company’s expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.*

*This Annual Report contains statistical data that we obtained from reports generated by the American Cancer Society and by DaVinci Oncology Specialists, a division of The Mattson Jack Group, Inc., or that we derived from information contained in these reports. These reports generally indicate that they have obtained their information from sources believed to be reliable but do not guarantee the accuracy and completeness of their information. Although we believe that the reports are reliable, we have not independently verified their data.*

*All references to “Genomic Health,” “we,” “us,” or “our” mean Genomic Health, Inc.*

*The Genomic Health logo, Oncotype, Oncotype DX and Recurrence Score are trademarks or registered trademarks of Genomic Health, Inc. We also refer to trademarks of other corporations and organizations in this Report.*

## **Company Overview**

Genomic Health, Inc. was formed as a Delaware corporation in August 2000. We are a life science company focused on the development and commercialization of genomic-based clinical diagnostic tests for cancer that allow physicians and patients to make individualized treatment decisions. In January 2004, we launched our first test under the brand name *Oncotype DX* for early stage breast cancer patients. We believe that *Oncotype DX* is the first genomic test with clinical evidence supporting its ability to predict the likelihood of cancer recurrence, the likelihood of patient survival within 10 years of diagnosis and the likelihood of chemotherapy benefit. Our initial test is focused on patients with early stage, node negative, or N-, estrogen receptor positive, or ER+, breast cancer who will be treated with tamoxifen, a frequently used hormonal therapy. Of the 240,000 patients who were expected to be diagnosed with breast cancer in the United States in 2006, approximately half were predicted to be early stage breast cancer patients that are N- and ER+. Many of the diagnostic factors currently used in connection with early stage breast cancer are subjective, have limited capability to predict future cancer recurrence and are not useful in predicting chemotherapy benefit. We believe that the use of *Oncotype DX* can provide a deeper understanding of each patient’s breast cancer and therefore should result in better informed and more appropriate treatment decisions.

We developed *Oncotype DX* using a multi-step approach, conducting clinical studies on tumor specimens from more than 2,600 breast cancer patients. Our technology provides quantitative gene expression information for each patient’s tumor, which we refer to as an oncoprint. When an oncoprint is correlated with known clinical outcomes, it can be useful in predicting the likelihood of an individual patient’s tumor behavior. *Oncotype DX* for breast cancer utilizes a 21-gene panel whose composite gene expression profile can be represented by a single quantitative score, which we call a Recurrence Score. The higher the Recurrence Score, the more aggressive the tumor and the more likely it is to recur. The lower the Recurrence Score, the less aggressive the tumor and the less likely it is to recur. *Oncotype DX* has been clinically validated for N-, ER+, tamoxifen-treated breast cancer patients by two large independent studies. Moreover, we have demonstrated that the Recurrence Score correlates with chemotherapy benefit, and we are undertaking further studies to support this finding. *Oncotype DX* is commercially available at a list price of \$3,460 through our laboratory located in Redwood City, California, which is accredited under the Clinical Laboratory Improvement Amendments of 1988, or CLIA, and by the College of American Pathologists, or CAP. Since the commercial launch of *Oncotype DX* in 2004 through December 31, 2006, over 21,500 tests had been delivered for use in treatment planning by more than 5,000 physicians.

Substantially all of our tests to date have been delivered to physicians in the United States. We believe that each year we may experience decreased demand for our test in the summer months of July and August, which may be attributed to physicians, surgeons and patients scheduling vacations during this time. One major customer accounted for approximately 47% of our product revenue for the year ended December 31, 2006; no revenue from this customer was recorded in 2005. Another major customer accounted for approximately 4% and 11% of our revenue in 2006 and 2005, respectively.

## **Scientific Background**

### ***Limits of Existing Approaches for Determining Cancer Treatments***

Cancer is a group of complex molecular diseases characterized by the uncontrolled growth and spread of abnormal cells resulting from genetic mutations or damage that can severely disrupt normal body functions. In

2006, approximately 1.4 million people in the United States were expected to be diagnosed with cancer. Common types of cancer include breast, prostate, lung and colon. Cancers are difficult to treat because each type responds differently to treatments, depending upon the individual and the type and location of the cancer.

To treat cancer effectively, physicians diagnose and gauge the stage of a patient's disease to determine the best course of therapy. The most common practice used to diagnose cancer is through pathologic evaluation of tumors under a microscope. For solid tumors, tumor tissue is typically removed through surgery or needle biopsy, fixed in a chemical preservative and embedded in paraffin wax. A pathologist places thin sections of this fixed paraffin embedded, or FPE, tissue onto glass slides so it can be studied under a microscope. In many cases, pathologists also use molecular staining techniques, including protein-specific staining, to improve the quality of their diagnosis. After visually examining the sample, the pathologist judges whether the biopsy contains normal or cancerous cells. The pathologist may also grade the tumor based on how aggressive the cancer cells appear under the microscope.

Once a pathologist diagnoses cancer, the patient's physician determines the stage of the cancer based on further analysis of the patient's condition using a variety of clinical measures, including the pathology grade, size of the tumor, how deeply the tumor has invaded tissues at the site of origin and the extent of any invasion into surrounding organs, lymph nodes or distant sites. Patient history, physical signs, symptoms and information obtained from existing tests are also evaluated and considered.

Physicians currently rely primarily on tumor pathology grade and stage when predicting whether a cancer will recur, which is the key determinant in treatment decisions. Because tumor pathology and staging are heavily dependent on visual assessment and human interpretation, physicians and patients make treatment decisions often using subjective and qualitative information that may not reflect the molecular nature of the patient's cancer. As a result, many patients are misclassified as high risk when they are low risk for recurrence or low risk when they are high risk for recurrence, resulting in over-treatment for some and under-treatment for others.

For many cancer patients, chemotherapy is commonly used as a treatment. Chemotherapy involves the use of highly toxic drugs to kill cancer cells. It is often given after surgery to kill remaining cancer cells that could not be physically removed, to reduce the risk of disease recurrence. Chemotherapy can take months to complete and can dramatically impact a patient's quality of life. Patients usually experience a wide range of acute toxicities, including infection, pain in the mouth and throat, weight loss, fatigue, hair loss, rashes and injection site reactions. In addition, long-term effects of chemotherapy can include cognitive impairment, cardiac tissue damage, infertility, disease of the central nervous system, chronic fatigue, secondary malignancies and personality changes. Overall benefits of chemotherapy vary significantly across cancer populations, and the benefit of treatment may not always justify the cost of the therapy or the physical and mental burden patients endure.

### *Use of Genomics to Understand Cancer*

Genomics is the study of complex sets of genes, their expression and their function in a particular organism. A gene is a set of instructions or information that is embedded in the DNA of a cell. For a gene to be turned on or "expressed" by a cell, the cell must first transcribe a copy of its DNA sequence into messenger RNA, which is then translated by the cell into protein. Proteins are large molecules that control most biological processes and make up molecular pathways, which cells use to carry out their specific functions.

Genomics can also be used to understand diseases at the molecular level. Diseases can occur when mutated or defective genes inappropriately activate or block molecular pathways that are important for normal biological function. Disease can result from inheriting mutated genes or from developing mutations in otherwise normal cells. Such mutations can be the cause of cancer. The ability to detect a mutation or its functional results and to understand the process by which the mutation contributes to disease is crucial to understanding the molecular mechanisms of a disease.

A common form of genomic analysis is the measurement of gene expression, or the presence and amount of one or more RNA sequences in a particular cell or tissue. Mutations may change the gene expression pattern of a cell as the cell responds to an altered genetic code. Quantifying the differences in gene expression has become a common way to study the behavior of an altered cell. This method allows for the measurement of the expression of single or multiple genes. These expression levels can be correlated with disease and clinical outcomes.



Advances in genomic technology have accelerated the rate and lowered the cost of gene expression analysis, thus providing unprecedented opportunity for clinical utility. We believe gene expression technology has the potential to improve the quality of diagnosis and treatment of disease by arming patients and physicians with an understanding of disease at a molecular level that is specific to each patient.

Cancer results from alterations in cells caused by the molecular changes of mutated genes. The behavior of cancer is dependent on many different genes and how they interact. Cancer is complicated and it may not be possible to identify a single gene that adequately signals a more aggressive or less aggressive type of cancer. The ability to analyze multiple genes expressed by the tumor provides more valuable information, which enables individualized cancer assessment and treatment.

The key to utilizing genomics in cancer is identifying specific sets of genes and gene interactions that are important for diagnosing different subsets of cancers. Studies can be performed which link response to therapy or the likelihood of recurrence to the pattern of gene expression in tumors. These results can then be used to develop tests that quantify gene expression of an individual's tumor, allowing physicians to better understand what treatments are most likely to work for an individual patient or how likely a cancer is to recur.

### ***Our Solution***

Our genomic-based diagnostic approach correlates gene expression information to clinical outcomes and provides information designed to improve treatment decisions for cancer patients. We have optimized technology for quantitative gene expression on FPE tissue by developing methods and processes for screening hundreds of genes at a time using minimal amounts of tissue. This technology allows us to analyze archived samples of tissue, retained by hospitals for most cancer patients, to correlate gene expression with known clinical outcomes. Once we have established and validated a test, we can then analyze a patient's tumor and correlate the result to known clinical outcomes. As a result, each tumor's gene expression can be quantified and correlated with responsiveness to therapy or the likelihood of cancer recurrence or progression. *OncoType DX*, our first clinically validated product, uses this quantitative molecular pathology approach to provide an individualized analysis of each patient's tumor.

We believe that our multi-gene analysis, as opposed to single-gene analysis, provides a more powerful approach to distinguish tumors as being more or less likely to recur or progress. Furthermore, as shown in breast cancer, our approach can be used to determine whether a cancer is more or less likely to benefit from therapy. This information ultimately allows the physician and patient to choose a course of treatment that is individualized for each patient.

Our solution fits within current clinical practice and therapeutic protocols, facilitating product adoption. We analyze tissues as they are currently handled, processed and stored by clinical pathology laboratories. Once a patient is diagnosed with breast cancer and a physician orders *OncoType DX*, the pathology lab provides us with the tumor block or thin sections from the biopsy specimen utilized for the diagnosis. Because the specimens are chemically preserved and embedded in paraffin wax, they require no special handling and can be sent by overnight mail to our laboratory in California. We believe this provides an advantage over tests using fresh or frozen tissue that require special handling, such as shipping frozen tissue on dry ice. We typically analyze the tissue and deliver our results to the treating physician within 10 to 14 days of receipt of the tissue sample. This is within the crucial decision window after the tumor has been surgically removed and before the patient and the treating physician discuss additional treatment options.

We believe our solution provides information that has the following benefits:

*Improved Quality of Treatment Decisions.* We believe our approach to genomic-based cancer analysis improves the quality of cancer treatment decisions by providing an individualized analysis of each patient's tumor that is correlated to clinical outcome. Our approach represents a substantial departure from existing approaches to treatment, which often use subjective, anatomic and qualitative factors to determine treatments. *OncoType DX* has been shown in clinical studies to classify many patients into recurrence risk categories different from classifications based on current guidelines. Thus, our solution enables patients and physicians to make more informed decisions about treatment risk-benefit considerations and, consequently, design an individualized treatment plan.

*Improved Economics of Cancer Care.* We believe that improving the quality of treatment decisions can result in significant economic benefits. In early stage breast cancer, our data shows that many patients are misclassified as high or low risk under existing treatment guidelines. Many low risk patients misclassified as high risk receive toxic and expensive chemotherapy treatment regimens. Chemotherapy and related costs may exceed \$20,000, as compared to Oncotype DX' s list price of \$3,460. On the other hand, some high risk patients misclassified as low risk are not provided chemotherapy treatment, possibly necessitating future treatment costing up to \$50,000 or more if the cancer recurs.

## **Oncotype DX**

Oncotype DX uses quantitative molecular pathology to improve cancer treatment decisions. We offer Oncotype DX as a clinical laboratory test, where we analyze tumor tissue samples in our laboratory and provide physicians with genomic information specific to the patient' s tumor. Early stage breast cancer is the first patient population where we have commercialized a genomic test that has been shown clinically to predict the likelihood of cancer recurrence, the likelihood of patient survival within 10 years of diagnosis and the likelihood of chemotherapy benefit.

Our technology provides quantitative gene expression information for each patient' s tumor, which we refer to as an onco<sup>type</sup>. When an onco<sup>type</sup> is correlated with known clinical outcomes, it can be useful in predicting the likelihood of an individual patient' s tumor behavior. This allows the physician and patient to address key issues such as risk of disease recurrence or progression, likelihood of long-term survival and potential benefit from chemotherapy or other treatments. In breast cancer, we developed our gene panel by narrowing the field of the approximately 25,000 human genes down to 250 cancer-related genes through review of existing research literature and computer analysis of genomic databases. We evaluated the 250 genes in three independent clinical studies to identify a 21-gene panel whose composite gene expression profile can be represented by a single quantitative score, which we call a Recurrence Score. The higher the Recurrence Score, the more aggressive the tumor and the more likely it is to recur. The lower the Recurrence Score, the less aggressive the tumor and the less likely it is to recur. Moreover, we have demonstrated that the Recurrence Score also correlates with the likelihood of chemotherapy benefit, and we are undertaking further studies to support this finding.

### ***Oncotype DX for Breast Cancer***

Approximately 240,000 new cases of breast cancer were diagnosed in the United States in 2006. Following diagnosis, a physician determines the stage of the breast cancer by examining the following:

the size of the tumor,

node status, referred to as node positive, or N+, where the tumor has spread to the lymph nodes, and node negative, or N-, where the tumor has not spread to the lymph nodes, and

the extent to which the cancer has spread to other parts of the body.

Breast cancer tumors are classified as stage I, II, III or IV. Stage I and II are generally referred to as early stage breast cancer, and stage III and IV are generally referred to as late-stage breast cancer. Standard treatment guidelines weigh the stage of the cancer and additional factors to predict cancer recurrence and determine treatment protocol such as:

the presence or absence of estrogen receptors, referred to as estrogen receptor positive, or ER+, where estrogen receptors are present, and estrogen receptor negative, or ER-, where estrogen receptors are not present,

the abundance of human epidermal growth factor receptor-type 2, or HER2, genes or protein in the tumor,

the age of the patient, and

the histological type and grading of the tumor as reported by the pathologist.

Because these diagnostic factors have limited capability to predict future recurrence and chemotherapy benefit, and some are subjective, a large percentage of early stage breast cancer patients are classified as high risk.

As a consequence, the use of chemotherapy has become standard practice in these patients even though the benefit to this patient group as a whole is small. Most early stage breast cancer patients have N<sup>-</sup>, ER<sup>+</sup> tumors. These patients have been demonstrated to respond well to hormonal therapy such as tamoxifen. Identifying which of these patients will further benefit from chemotherapy is a difficult decision under current guidelines. A National Surgical Adjuvant Breast and Bowel Project, or NSABP, study published in 2004 showed that after 12 years of follow-up, overall survival in N<sup>-</sup>, ER<sup>+</sup> breast cancer patients using tamoxifen hormonal therapy alone was approximately 83% and the overall survival using tamoxifen hormonal therapy and chemotherapy was 87%. Therefore, the incremental survival benefit of chemotherapy in this study was only 4%. Our test is designed to help identify those patients with aggressive tumors who are most likely to benefit from chemotherapy and identify those patients with less aggressive tumors who may receive minimal clinical benefit from chemotherapy.

We believe that *Oncotype DX* is the first genomic test that has clinical evidence supporting its ability to predict the likelihood of cancer recurrence, the likelihood of patient survival within 10 years of diagnosis and the likelihood of chemotherapy benefit in early stage, N<sup>-</sup>, ER<sup>+</sup> breast cancer patients treated with tamoxifen. *Oncotype DX* is currently available at a list price of \$3,460. We accept orders from all 50 states through our commercial laboratory located in Redwood City, California. Our laboratory is licensed under CLIA and accredited by CAP.

When the treating physician places an order for *Oncotype DX*, the local pathology laboratory sends the tumor sample to our laboratory. Once we receive the tumor sample, it is logged in and processed by our pathology department. Suitable samples then undergo a process by which RNA is extracted and purified. We then analyze the resulting material and produce a report, typically within 10 to 14 days of the receipt of the sample that shows a Recurrence Score on a continuum between 0-100. The Recurrence Score, along with other data and tests that physicians obtain, forms the basis for the treatment decision.

The Recurrence Score has been clinically validated to correlate with an individual's likelihood of breast cancer recurrence within 10 years of diagnosis. The lower the Recurrence Score the less likely the tumor is to recur and the higher the Recurrence Score the more likely the tumor is to recur. A Recurrence Score range from 0 to 100 correlates to an actual recurrence range from about 3% recurrence to over 30% recurrence for patients in our validation study using the NSABP Study B-14 population. This continuous range of scores differentiates *Oncotype DX* from other tests that predict only high or low risk by providing an individualized level of risk. To evaluate our clinical validation studies and compare *Oncotype DX* to other methods of classifying risk, we defined Recurrence Score ranges for low, intermediate and high risk groups. A Recurrence Score below 18 correlates with a low likelihood of recurrence; a Recurrence Score equal to or greater than 18 but less than 31 correlates with an intermediate likelihood of recurrence; and a Recurrence Score equal to or greater than 31 correlates with a high likelihood of recurrence. Within each risk category, *Oncotype DX* further quantifies the risk for any given patient. For example, a low risk patient may have as low as a 3% likelihood of recurrence of breast cancer within 10 years or as high as an 11% likelihood of recurrence, depending on the individual Recurrence Score. We believe this represents a substantial improvement upon existing methods for classifying patient risk.

## **Clinical Development and Validation of *Oncotype DX***

### ***Clinical Development of the *Oncotype DX* Recurrence Score***

We developed *Oncotype DX* using a multi-step approach, conducting clinical studies on tumor specimens from more than 2,600 breast cancer patients. First, we developed methods, using RT-PCR, to quantify the expression of hundreds of genes in RNA isolated from fixed paraffin embedded tumor tissue. We then selected 250 cancer-related genes using computer analysis of genomic databases and our knowledge of cancer pathways. Third, we performed three independent breast cancer clinical studies in a total of 447 patients with known clinical outcomes to test the relationship between the expression of the 250 cancer-related genes and recurrence. Two of these studies were conducted at Providence Saint Joseph Medical Center and Rush University Medical Center, using samples from patients with N<sup>-</sup> and N<sup>+</sup> tumors who received tamoxifen, chemotherapy or both. A third study was conducted in our specific target population of N<sup>-</sup>, ER<sup>+</sup> patients treated with tamoxifen.

From these studies we selected a panel of 21 genes, comprised of 16 cancer-related genes and five reference genes, with which we developed the Recurrence Score utilizing a number of statistical approaches. The Recurrence

Score is obtained by first normalizing the expression of the cancer-related genes against the reference genes and then applying the Recurrence Score formula to calculate a single score scaled between 0 and 100.

***Clinical Validation of Prediction of Recurrence and Survival in N<sup>-</sup>, ER<sup>+</sup> Patients Treated with Tamoxifen***

Our clinical validation studies were designed to answer two questions about the utility of the Recurrence Score when N<sup>-</sup>, ER<sup>+</sup> breast cancer patients treated with tamoxifen make additional treatment decisions. First, we wanted to test whether *Oncotype DX* could differentiate patients with a high likelihood of recurrence from patients with a low likelihood of recurrence. Second, we wanted to expand these results with a second study to demonstrate success in predicting breast cancer survival in a community hospital setting.

*Oncotype DX Predicts the Likelihood of Recurrence.* Our initial validation study was performed in 2003 in collaboration with the NSABP to determine whether *Oncotype DX* predicts the likelihood of breast cancer recurrence. This study, which was reported at the San Antonio Breast Cancer Conference in December 2003 and published in *The New England Journal of Medicine* in December 2004, evaluated the ability of *Oncotype DX* to quantify the likelihood of breast cancer recurrence over 10 years. The study involved 668 patients who were enrolled in the NSABP Study B-14 between 1982 and 1988. Each patient sample was analyzed in a blinded fashion and the results provided back to the NSABP through a neutral party at the University of Pittsburgh for analysis. The Recurrence Score was used to prospectively define the following three risk groups based on our clinical development studies described above:

a low risk group, with a Recurrence Score of less than 18, classified 51% of patients with an average recurrence rate of 6.8%;

an intermediate risk group, with a Recurrence Score equal to or greater than 18 but less than 31, classified 22% of the patients with an average recurrence rate of 14.3%; and

a high risk group, with a Recurrence Score greater than 31, which included 27% of the patients with an average recurrence rate of 30.5%.

The Recurrence Score was able to assign patients into high and low risk groups ( $p < 0.001$ ) and, when the Recurrence Score was examined together with age and tumor size in a multivariate analysis, only the Recurrence Score remained a significant predictor of patient outcome ( $p < 0.001$ ). A p-value indicates the probability that the result obtained in a statistical test is due to chance rather than a true relationship between measures. A small p-value, generally less than 0.05, or  $p < 0.05$ , indicates that it is very unlikely that the results were due to chance. In this study we also demonstrated that the likelihood of distant recurrence at 10 years increased continuously as the Recurrence Score increased, with a range from about 3% recurrence for a Recurrence Score of zero to greater than 30% recurrence for patients in the high Recurrence Score category. In addition, in subgroup analysis of various ages, tumor sizes and pathology grade, the Recurrence Score remained a consistent predictor of distant recurrence.

*Oncotype DX Predicts the Likelihood of Breast Cancer Survival in a Community Hospital Setting.* In collaboration with Northern California Kaiser Permanente, we conducted a large, case-control, epidemiological study of breast cancer patients diagnosed from 1985 to 1994 at 14 Northern California Kaiser hospitals. This study was initially reported at the San Antonio Breast Cancer Conference in December 2004 and further detailed results were presented at the annual meeting of the American Society of Clinical Oncology, or ASCO, in May 2005 and published in the *Journal of Clinical Oncology* in May 2006. Patients who died of breast cancer, or the cases, were matched with up to three controls based on each case's age, race and ethnicity, tamoxifen treatment, facility and diagnosis year. Controls had to be alive at the time of the corresponding case's death in order to compare outcomes and availability of follow-up for those patients alive at time of each case death. To be eligible, patients had to be N<sup>-</sup>, less than 75 years old and not have received adjuvant chemotherapy. Among a potentially eligible population of 4,964 patients, we identified 220 eligible cases and 570 matched controls. Approximately one-third of the study patients were treated with tamoxifen. This study was performed to confirm that the Recurrence Score predicts breast cancer survival at 10 years in ER<sup>+</sup> patients treated with tamoxifen. The likelihood of breast cancer survival at 10 years was more than five fold higher for patients in the pre-defined low Recurrence Score group when compared to patients in the pre-defined high Recurrence Score group ( $p < 0.003$ ). With respect to the group of ER<sup>+</sup> patients

treated with tamoxifen, the absolute risk of breast cancer death at 10 years in the pre-specified risk groups was 2.8% for the low risk group, 10.7% for the intermediate risk group and 15.5% for the high risk group. Additionally, in the larger population of ER+ patients untreated with tamoxifen, the Recurrence Score was also statistically significantly associated with breast cancer death at 10 years ( $p < 0.025$ ). This study, conducted in a community hospital setting, demonstrates that the Recurrence Score is independently associated with risk of breast cancer death and is able to identify subgroups of patients according to low, intermediate and high risk of death at 10 years.

#### ***Additional Questions Addressed by Further Studies***

Additional studies were conducted to investigate three clinical and scientific questions:

How do patients in the different Recurrence Score risk groups respond to tamoxifen plus chemotherapy versus tamoxifen alone?

Does the Recurrence Score predict the likelihood of recurrence, the benefit from tamoxifen or both?

Does the Recurrence Score apply to untreated ER- patients and untreated ER+ patients?

*Oncotype DX Predicts the Likelihood of Chemotherapy Benefit.* We conducted a study in 2004 with the NSABP to determine whether *Oncotype DX* is predictive of the likelihood of chemotherapy benefit. This study, which was reported initially at the San Antonio Breast Cancer Conference in December 2004 and further detailed results were presented at ASCO's annual meeting in May 2005, included 651 patients from the NSABP Study B-20 with N-, ER+ breast cancer enrolled from 1988 to 1993. Of these patients, 227 were treated with tamoxifen alone and 424 were treated with tamoxifen plus chemotherapy. The results of this study demonstrated that low risk patients, as defined by the Recurrence Score, had a 96% recurrence-free survival rate at 10 years without chemotherapy compared with a 95% survival rate with chemotherapy, and intermediate risk patients as defined by the Recurrence Score had a 90% survival rate without chemotherapy compared with an 89% rate with chemotherapy. High risk patients as defined by the Recurrence Score had a 60% survival rate without chemotherapy compared with an 88% rate with chemotherapy ( $p < 0.001$ ). These results demonstrate that *Oncotype DX* not only quantifies recurrence and survival risk but also correlates with the likelihood of chemotherapy benefit in early stage N-, ER+ breast cancer patients.

*Oncotype DX Predicts Likelihood of Recurrence Because it Predicts both Prognosis and Tamoxifen Benefit.* In 2004, we conducted an expanded study with the NSABP Study B-14 population to determine whether *Oncotype DX* captures information regarding likelihood of distant recurrence, tamoxifen benefit, or both. This study's conclusions were initially reported at the San Antonio Breast Cancer Conference in December 2004. Further detailed results were presented at ASCO's annual meeting in May 2005 and published in the *Journal of Clinical Oncology* in May 2006. The study included 645 patients with N-, ER+ breast cancer enrolled from 1982 to 1988, 355 of whom were given placebos and 290 of whom were treated with tamoxifen. The results of this study demonstrated that *Oncotype DX* predicts the likelihood of distant disease recurrence in tamoxifen-treated patients with N-, ER+ breast cancer because it captures both prognosis and tamoxifen benefit. Furthermore, this study of *Oncotype DX* demonstrates that low and intermediate risk patients as defined by the Recurrence Score had the largest benefit of tamoxifen and high risk patients as defined by the Recurrence Score had minimal benefit of tamoxifen. The quantitative levels of ER, as defined by *Oncotype DX*, varied by over two-hundred fold within the ER+ population and increasing levels of quantitative ER gene expression correlated with increasing tamoxifen benefit. Finally, *Oncotype DX* was able to discriminate between high and low risk patients in a subset of patients not treated with tamoxifen.

*Results Were Inconclusive as to Whether Oncotype DX Predicts Likelihood of Recurrence in a Mixed Population of N-, Untreated Patients.* In 2003, we conducted a trial with The M.D. Anderson Cancer Center to test the predictive power of *Oncotype DX* in untreated breast cancer patients who were either ER- or ER+. This study was first reported at the San Antonio Breast Cancer Conference in December 2003 and published in *Clinical Cancer Research* in May 2005. Out of a pool of over 4,000 N- patient tissue samples, only 149 patients were untreated and had a sufficient tissue sample and RNA available to make them eligible for the study. The study population differed significantly from the NSABP Study B-14 treatment arm used for our initial validation study in that none of the patients were treated with tamoxifen, and the population included ER- and ER+ patients. This



study did not demonstrate a significant predictive power for *Oncotype DX* in untreated N patients. Importantly, it also did not demonstrate the expected predictive power for other known predictive factors. For example, tumor grade inversely correlated with expected outcomes. Subsequent evaluations of *Oncotype DX* in the NSABP Study B-14 placebo arm using samples from untreated ER+ patients and in the Kaiser Permanente population-based study using samples from untreated ER+ and ER- patients demonstrated a correlation between the Recurrence Score and recurrence and survival. These results were reported at the San Antonio Breast Cancer Conference in December 2004 and ASCO's annual meeting in May 2005.

### ***Health Economic Benefits of Oncotype DX***

We are sponsoring third-party studies conducted by researchers affiliated with academic institutions to examine the health economic implications of *Oncotype DX*. Two such studies, one of which was published in *The American Journal of Managed Care* in May 2005, analyzed data from patients in the NSABP Study B-14 multi-center clinical trial to compare risk classification based on guideline criteria from the National Comprehensive Cancer Network, or NCCN, to risk classification by *Oncotype DX*. Of the 668 patients in the NSABP study population, NCCN guidelines classified 615, or 92%, as high risk and 53, or 8%, as low risk. Of the 615 patients classified as high risk by NCCN, *Oncotype DX* classified 49% as low risk, 22% as intermediate risk and 29% as high risk. Of the 53 patients that NCCN classified as low risk, *Oncotype DX* classified 6% as high risk, 22% as intermediate risk and 72% as low risk. In each case, *Oncotype DX* provided a more accurate classification of risk than the NCCN guidelines as measured by 10 year distant recurrence free survival.

Based on these results, a model was designed to forecast quality-adjusted survival and expected costs, or the net present value of all costs of treatment until death, if *Oncotype DX* was used in patients classified as low risk or high risk by NCCN guidelines. The model, when applied to a hypothetical population of 100 patients with the demographic and disease characteristics of the patients entered in the NSABP Study B-14, demonstrated an increase to quality-adjusted survival in this population of 8.6 years and a reduction in projected aggregate costs of approximately \$200,000. Furthermore, the model showed that as the expected costs and anticipated toxicity of chemotherapy regimens increase, the use of the Recurrence Score to identify which patients would benefit from chemotherapy should lead to larger reductions in projected overall costs. According to this study, if all early stage breast cancer patients and their physicians used *Oncotype DX* and acted on the information provided by the Recurrence Score, there would be significant economic benefit to the healthcare system.

### **New Product Development**

We developed *Oncotype DX* using the following multi-phased clinical development platform that we intend to use in developing future products for breast and other cancers:

*Early Development Phase.* In this phase, we establish a product definition and research plan. Our research team initiates the clinical research program with computer-based screening of the approximately 25,000 genes in the human genome to select candidate genes. The gene selection process uses genomic databases and knowledge of key cancer and drug related pathways. We use internally developed software for optimization and rapid selection of target DNA sequences in order to develop quantitative molecular pathology assays for each gene. To date, we have compiled a library of over 1,300 individual gene tests for use in multiple product opportunities. We secure access to archival tumor biopsy samples for feasibility studies as well as archival tumor biopsy samples correlated with clinical data for gene identification studies. The goal of these studies is to identify genes that correlate with a specific clinical outcome prior to moving the program into development.

*Development Phase.* We conduct additional clinical studies to refine the gene set in the specific patient population of interest. We select the final gene panel through statistical modeling of the gene correlation data to develop the best quantitative correlation to the target clinical outcome. With a gene panel and quantitative methodology established, we then finalize all of the remaining assay parameters. For example, for *Oncotype DX* we tested and verified protocols for RNA extraction and amplification, automated chemistry and reagent quality control and handling to establish a reproducible, scaleable process. Once the genes, assay chemistry, automation and analysis specifications are finalized, tested and verified, we begin clinical validation.

*Validation Phase.* In this phase, we conduct one or more validation studies with prospectively designed endpoints to test our candidate gene panel and the corresponding quantitative expression score. These studies are conducted with a different set of archival patient specimens to verify that the test correlates with the predicted clinical outcome in an independent patient population. Since we control the quality and reproducibility of our assays using FPE tissues, we are able to conduct large validation studies with archived samples with years of clinical outcomes. This allows validation studies to be performed more rapidly than would be the case with techniques that require fresh tissue, which must be newly collected and need many years of follow up before study results can be obtained.

*Commercialization and Product Expansion Phase.* Once a test is commercialized, we may perform additional studies designed to support the test's clinical utility and potentially to broaden its use in additional patient populations or for additional indications. Multiple clinical studies can also be useful for driving adoption and reimbursement by physicians and payors. Such studies may include prospective studies to verify that our test is changing physician behavior as well as testing a commercial product in new populations. The results of a study conducted by oncologists at the Rocky Mountain Cancer, which were presented at the 2005 San Antonio Breast Cancer Symposium, confirmed that the Recurrence Score has an impact on treatment decisions made by physicians in current clinical practices. Additional studies to support the test's clinical utility and broaden its use are currently ongoing.

### ***Our Product Pipeline***

Over 600,000 treatment decisions were expected to be made in the United States in 2006 for patients diagnosed with early stages of breast, colon, prostate, renal cell and lung cancers and melanoma. Early stage cancers are often treated with adjuvant treatments that are administered in conjunction with primary therapy, such as surgery and radiation, intended to prevent the recurrence of a particular cancer. The early stage patient population is generally the larger treatment population for most cancers. While our products under development focus on early stage disease, we consider product opportunities in late-stage disease when appropriate.

**Product Development Opportunities in Breast Cancer**

The following table describes our current breast cancer product and our product opportunities:

Breast Cancer Products	Breast Cancer Population	2006 Estimated Treatment Decisions in the United States		Anticipated Product Attributes	Product Stage
Oncotype DX	N-, ER+	130,000		Recurrence Chemotherapy benefit	Commercial
				Chemotherapy or other therapeutic regimens benefit	Product Expansion
	Single gene reporting N-, ER+	130,000		Chemotherapy or other therapeutic regimens benefit	Product Expansion
	N+	70,000		Recurrence Chemotherapy or other therapeutic regimens benefit	Product Expansion
	Single gene reporting N+	70,000		Chemotherapy or other therapeutic regimens benefit	Product Expansion
Oncotype DX – Second Generation	N-, ER+ and	200,000	(1)	Enhanced recurrence	Early Development
	N+			Enhanced chemotherapy benefit	
New Product Opportunities	N-, ER-	30,000		Taxane benefit(2)	Early Development
				Chemotherapy benefit Recurrence	
	N+	70,000	(3)	Taxane benefit Chemotherapy benefit	Early Development
	N-, ER+	130,000	(4)	Taxane benefit	Early Development

- (1) Represents the sum of the 130,000 estimated treatment decisions in 2006 for N-, ER+ patients and 70,000 estimated treatment decisions in 2006 for N+ breast cancer patients listed above.
- (2) Taxanes are a class of chemotherapy drugs that are commonly used for breast cancer.
- (3) This figure is the same as the 70,000 treatment decisions listed above.
- (4) This figure is the same as the 130,000 treatment decisions listed above.

*Oncotype DX*

We are conducting clinical studies with Oncotype DX with the goals of expanding the applications in which it may be used and improving certain product features. Approximately 70,000 patients were expected to be diagnosed in the United States in 2006 with N+ breast cancer and many may not benefit from chemotherapy or may have other health issues that increase the risk of chemotherapy treatment. Our early clinical research studies with Rush University Medical Center and Providence Saint Joseph Medical Center support further investigation of Oncotype



DX for prediction of recurrence in this patient population. Node positive studies are ongoing with additional studies planned for 2007 which, if successful, may support the launch of a commercial product in 2008. Additionally, we believe that gene scores reported as individual gene scores in addition to the Recurrence Score may have additional utility in predicting outcomes for specific therapies or disease subtypes. For example, a quantitative ER score may be a clinically useful predictor of tamoxifen benefit based on our studies of the NSABP Study B-14 population. We are conducting additional studies to evaluate the clinical utility of individual *Oncotype DX* genes and, if successful, plan to provide single gene results for ER and progesterone receptor, or PR, gene expression in test results by the end of 2007.

*Second Generation Oncotype DX*

We are in the early development phase of investigating additional genes and gene combinations that may add to the predictive power of *Oncotype DX*. A second generation product, if successful, could further refine and improve the classification of patients and result in better information for treatment decisions. We have identified multiple genes through research and development studies that, in varying combinations, may provide improved prediction of recurrence risk and likelihood of chemotherapy benefit.

*Recurrence and Benefit Test for N-, ER- Breast Cancer*

We are in the early development phase for a product to predict the likelihood of recurrence and chemotherapy benefit in N-, ER- breast cancer patients. This population was expected to represent approximately 30,000 patients in the United States in 2006. To date, we have conducted several clinical research studies that included N-, ER- breast cancer patients, and we plan to continue to explore opportunities in this population, including tests to better define ER- patients based on quantitative molecular pathology.

*Taxane Benefit Test*

We are also in the early development phase for a product to predict the likelihood of taxane benefit. Taxanes are a class of chemotherapy drugs that are used in addition to traditional chemotherapy regimens in some patients but have side effects and are most often used in patients with aggressive or later stage tumors. The potential population for this product includes the estimated 70,000 N+ breast cancer patients as well as N-, ER- patients at high risk and N- patients at high risk in the United States in 2006. We have developed a number of hypotheses and selected a gene panel to investigate this product opportunity further.

***Product Development Opportunities in Other Cancers***

The following table describes our products in various stages of development for cancers other than breast cancer:

<u>Product Opportunity</u>	<u>2006 Estimated Total Incidence in the United States</u>	<u>2006 Estimated Addressable Population</u>	<u>Anticipated Product Attributes</u>	<u>Product Stage</u>
Colon Cancer	120,000	65,000	Recurrence Prediction of drug response	Development
Prostate Cancer	260,000	200,000	Progression Recurrence	Early Development
Renal Cell Cancer	40,000	25,000	Recurrence Prediction of drug response	Early Development
Non-small Cell Lung Cancer	160,000	45,000	Recurrence Prediction of drug response	Early Development
Melanoma	70,000	60,000	Recurrence Prediction of drug response	Early Development

*Colon Cancer Recurrence and Response Test*

In January 2007 we moved a potential test to predict the likelihood of recurrence and chemotherapy benefit in patients with early stage colon cancer from early development to development phase. Colon cancer was expected to affect approximately 120,000 individuals in the United States in 2006, of which approximately 65,000 early stage patients needed to decide whether or not to use chemotherapy for their cancer, as well as which chemotherapy to use. Only a small percentage of colon cancer patients are expected to have a survival benefit from additional treatment after surgery. We have developed an investigational 758-gene panel for colon cancer and have established a collaborative agreement with the NSABP, as well as other academic groups, to access colon tissue samples that have associated clinical outcome data. If successful, studies in 2007 may lead to a validation study in 2008, which could result in a commercial launch in 2009.

*Prostate Cancer Progression and Recurrence Test*

We are in the early development phase for a test to predict the likelihood of progression and recurrence of prostate cancer in early stage patients. Approximately 260,000 men were expected to be diagnosed with prostate cancer in the United States in 2006, approximately 200,000 of whom will need to make critical decisions on whether or not to undergo local therapy, such as surgery or radiation, and on whether or not to have additional treatment after local therapy. Because the side effects of surgery and local radiation therapy can be serious, a need exists for a reliable test to determine the likelihood of progression. There is also a need for a reliable test to determine the likelihood of recurrence after local treatment, because hormonal therapy and chemotherapy have significant side effects as well. We are in the process of defining our prostate cancer gene panel and we have completed initial feasibility studies and gained access to clinical samples correlated with outcome data in prostate cancer under a collaborative agreement with an academic group.

*Renal Cell Cancer Recurrence and Response Test*

We are in the early development phase for a test to predict the likelihood of recurrence and response to therapy in renal cell cancer. Approximately 40,000 individuals were expected to be diagnosed with renal cell cancer in the United States in 2006. Recently reported studies suggest that some of these patients may respond to new treatments.

We have completed initial feasibility studies to extract RNA from renal cell cancer specimens and are currently working to define potential products for patients with renal cell cancer under a collaborative agreement with an academic group that has access to clinical samples correlated to outcome data.

*Non-small Cell Lung Cancer Recurrence and Response Test*

We are in the early development phase for a test to predict the likelihood of chemotherapy benefit in early stage, non-small cell lung cancer. Approximately 160,000 individuals were expected to be diagnosed with non-small cell lung cancer in the United States in 2006, of which approximately 45,000 of those patients were expected to be diagnosed before the cancer spreads and will need to make chemotherapy treatment decisions. Recent clinical studies suggest that at least some of those early stage patients will benefit from chemotherapy. The use of chemotherapy in early stage non-small cell lung cancer is relatively recent and is likely to accelerate. We have completed initial feasibility studies in lung tissues as a part of our EGFR inhibitor program described below and are in the process of defining our lung cancer gene panel. We have a collaborative agreement with an academic group that has access to clinical samples correlated to outcome data.

*Melanoma Recurrence and Response Test*

We are in the early development phase for a test to predict the likelihood of recurrence and response to therapy for patients with melanoma. Approximately 70,000 individuals were expected to be diagnosed with melanoma in the United States in 2006, of which approximately 60,000 of those patients were expected to be diagnosed before the cancer spreads and will need to make chemotherapy decisions. Recently reported studies suggest that some of these patients may respond to new treatments. We have conducted initial feasibility studies to extract RNA from melanoma cancer specimens and are currently working to define potential products for melanoma under a collaborative agreement with an academic group that has access to tissue samples that have been correlated to outcome data.

*Product Development Opportunities for Targeted Therapeutics*

Both anti-cancer drugs recently approved by FDA and new anti-cancer drugs in clinical development are designed to provide more targeted treatment, which should improve efficacy and reduce side effects. A need exists to identify those patients who, based on the genomic profile of their tumors, are most likely to benefit from these therapies. We believe our individualized genomic analysis has the potential to improve patient selection for these therapies. We have had a number of discussions with pharmaceutical companies regarding the use of *Oncotype DX* or our clinical development platform to identify subsets of patients more likely to respond to a particular therapy. We have completed several studies with different companies to evaluate our technology, and we have discussed our clinical development platform with pharmaceutical companies for exploratory clinical studies.

*Epidermal Growth Factor Receptor, or EGFR, Inhibitor Response Test*

We are in the early development phase to develop tests to predict the likelihood of response to the EGFR inhibitor class of drugs. The market opportunity for these tests will initially be limited to metastatic disease in lung and colon cancer, with an estimated 60,000 patients in the United States in 2006, where such drugs are currently approved. We have conducted three small clinical research studies in lung cancer, colon cancer and head and neck cancer which allowed us to identify and file patent applications on a number of genes which may predict the response to EGFR inhibitors. Further clinical development may require partnerships with pharmaceutical companies that have access to appropriate clinical trial specimens.

In July 2005, we signed a collaborative agreement with Bristol-Myers Squibb Company and ImClone Systems Incorporated to develop a genomic test to predict the likelihood of response to Erbitux in colorectal carcinoma. Erbitux is a targeted therapy currently approved for the treatment of metastatic colorectal carcinoma. Consistent with terms we generally require in our collaborative agreements, the agreement provides for research funding support and milestone payments and provides us commercial rights to diagnostic tests that result from the collaboration.

### *Targeted Therapies in Breast Cancer*

We entered into collaborative agreements with Aventis, Inc., a member of the sanofi-aventis group, and the Eastern Cooperative Oncology Group to investigate the ability of gene expression in fixed-paraffin-embedded tissues to predict the likelihood of response to adjuvant chemotherapy, including Taxotere, in patients with early breast cancer and zero to three involved lymph nodes. The agreements provide us with commercial rights to diagnostic tests that may result from the collaboration and were effective as of December 1, 2005.

We cannot assure you that any of the above product opportunities or products in development will ever be commercialized or, if commercialized, will ever be successful.

### **Technology**

We utilize existing technologies such as RT-PCR and information technologies and optimize and integrate them into new processes. We expect to continue to extend the capabilities of the various components of our process to develop effective products. Our technology allows us to:

#### ***Extract RNA from FPE-tumor Biopsies***

Our product development requires that we be able to quantify the relative amounts of RNA in patients' FPE tissue specimens. We have developed proprietary technology, intellectual property and know-how for optimized and automated methods for extraction and analysis of RNA from FPE tissue. Although others can extract RNA from FPE tissue, to our knowledge the process has not been optimized and scaled up for high-throughput clinical testing and large-scale clinical development studies involving large numbers of genes. Our process uses commercially available reagents and instruments with our own proprietary process and automation protocols, which results in RNA extraction from the range of tissues used in our clinical development studies and our commercial laboratory test.

#### ***Amplify and Detect Diminished Amounts of RNA Consistently***

We use a well-established technology that we license from Roche called RT-PCR as the basis for our quantitative molecular pathology assays. This technology uses PCR along with fluorescent detection methods to quantify the relative amount of RNA in a biological specimen. We believe our technology platform has the following advantages:

*Sensitivity.* We have developed protocols for extracting and quantifying RNA utilizing RT-PCR. Our method for amplifying small fragmented RNA is designed to allow us in the future to conduct studies with hundreds to thousands of genes from 10 micron sections of FPE tissue. Together with the inherent amplification of PCR, our platform provides us with sophisticated capabilities to quantify RNA levels from minimal amounts of tissue. The ability to amplify RNA allows us to maintain a repository of RNA from limited tissue samples that can be used for later studies.

*Specificity.* Human tissues contain thousands of different genes that are often highly related in sequence content, making it challenging for genomic tests to specifically identify molecules of interest. Our RT-PCR platform is highly specific because it works only when three different test reagents, called DNA probes and primers, independently match each gene to be measured. In addition, we have designed and implemented proprietary software for selecting optimal probe and primer sequences in an automated, high-throughput process. Our technology is also capable of quantifying non-coding RNA sequences that are present in miniscule quantities within tissues. The ability to utilize these sequences allows us to design highly specific assays for closely related genes.

*Precision and Reproducibility.* The reagents, materials, instruments and controls in our processes are used by trained personnel following validated standard operating procedures. Validation studies have shown that these standard operating procedures precisely quantify tested RNA with minimal variability in the assay system across days, instruments and operators. This enables our laboratory to produce consistently precise and accurate gene expression results. Our quality control methods for our reagents and processes, along with

our software for automation, sample tracking, data quality control and statistical analysis, add to the reproducibility and precision of our test.

*Dynamic Range.* Because our RT-PCR platform can amplify small amounts of RNA in proportion to the amount present in the sample, we are able to measure RNA levels across as much as a hundred thousand fold range of differing RNA expression. Having a broad range of high resolution testing capability increases the quality of our correlations with clinical outcomes and therefore the predictive power of our tests.

### ***Analyze Hundreds of Genes***

Historically, RT-PCR has been used to screen one or, at most, a few genes at a time. The methods and know-how we have developed allow us to expand RT-PCR technology to a scale that enables screening of hundreds of genes at a time while using minimal amounts of tissue. During our initial years of operation, we typically screened 48 to 96 genes from a standard FPE tissue sample using RNA from three 10 micron sections of tissue. By 2003, we routinely screened 192 genes from each sample and, by 2004, we screened 384 genes per sample. Today, we have the capability to screen up to 768 different genes per sample without sacrificing the sensitivity, specificity and reproducibility of RT-PCR. With continued investment in miniaturization and automation, we believe that our technology will be capable of continued increases in throughput.

### ***Employ Advanced Information Technology***

We have developed computer programs to automate our RT-PCR assay process. We have also developed a laboratory information management system to track our gene-specific reagents, instruments, assay processes and the data generated. Similarly, we have automated data analysis, storage and process quality control. We use statistical methods to optimize and monitor assay performance and to analyze data from our early development and development studies.

## **Competition**

We believe that we compete primarily on the basis of:

- the value of the quantitative information *Oncotype DX* provides;
- the clinical validation of *Oncotype DX*' s ability to predict recurrence and survival, and the demonstration of *Oncotype DX*' s ability to predict the likelihood of chemotherapy benefit;
- our ability to perform clinical studies using archival tissue as it is currently processed, handled and stored;
- our ability to screen hundreds of genes at a time;
- the speed with which our clinical development platform can commercialize products;
- our clinical collaborations with clinical study groups;
- the level of customer service we provide, both to patients and health care professionals; and
- our ability to obtain appropriate regulatory approvals in a timely fashion.

We believe that we compete favorably with respect to these factors, although we cannot assure you that we will be able to continue to do so in the future or that new products that perform better than *Oncotype DX* will not be introduced. We believe that our continued success depends on our ability to:

- continue to innovate and maintain scientifically advanced technology;
- enhance *Oncotype DX* for breast cancer to provide information in response to additional indications;
- continue to validate our products, especially with respect to chemotherapy benefit;
- continue to obtain positive reimbursement decisions from payors;
- expand *Oncotype DX* for use in other forms of cancer;

attract and retain skilled scientific and sales personnel;  
obtain patents or other protection for our products;  
obtain and maintain our clinical laboratory accreditations and licenses; and  
successfully market and sell *Oncotype DX*.

Currently, our principal competition comes from existing diagnostic methods utilized by pathologists and oncologists, which generally involve assessing and evaluating the grade and stage of cancerous tumors when determining risk of recurrence. These methods, which have been used for many years and are therefore difficult to change or supplement, are typically accomplished in a short period of time without much expense. In addition, companies offering capital equipment and inexpensive kits or reagents to local pathology laboratories represent another source of potential competition. These kits are used directly by the pathologist, which facilitates adoption more readily than tests like *Oncotype DX* that are performed outside the pathology laboratory. Also, few diagnostic methods are as expensive as *Oncotype DX* and others may develop lower-priced, less complex tests that could be viewed as the equivalent of ours.

We also face competition from many companies that offer products or have conducted research to profile gene expression in breast cancer, including Agendia B.V. and AviraDX. Commercial laboratories with strong distribution networks for diagnostic tests, such as Genzyme Corporation, Laboratory Corporation of America Holdings and Quest Diagnostics Incorporated, may become competitors. Other potential competitors include companies that develop diagnostic tests such as Bayer Healthcare LLC, Celera Genomics, a division of Applera Corporation, Roche Diagnostics, a division of F. Hoffmann-La Roche Ltd, and Veridex LLC, a Johnson & Johnson company, other small companies and academic and research institutions. In addition, in December 2005, the federal government allocated a significant amount of funding to The Cancer Genome Atlas, a project aimed at developing a comprehensive catalog of the genetic mutations and other genomic changes that occur in cancers and maintaining the information in a free public database. As more information regarding cancer genomics becomes available to the public, we anticipate that more products aimed at identifying targeted treatment options will be developed and these products may compete with ours.

Our test is currently considered relatively expensive for a diagnostic test, and we expect to raise prices in the future. Many of our present and potential competitors have widespread brand recognition and substantially greater financial and technical resources and development, production and marketing capabilities than we do. Others may develop lower-priced, less complex tests that could be viewed by physicians and payors as functionally equivalent to our test. Some competitors have developed tests cleared for marketing by FDA, and there may be a marketing differentiation or a perception that an FDA-cleared test is more desirable than *Oncotype DX*. Competition among these entities to recruit and retain highly qualified scientific, technical and professional personnel and consultants is also intense. If we are unable to compete successfully against current or future competitors, we may be unable to increase market acceptance for and sales of our test, which could prevent us from increasing or sustaining our revenues, or achieving or sustaining profitability.

## **Reimbursement**

Revenues for clinical laboratory tests may come from several sources, including commercial third-party payors, such as insurance companies and health maintenance organizations, government payors, such as Medicare and Medicaid, patients and in some cases, from hospitals or referring laboratories (who, in turn bill third-party payors for testing).

To gain broad reimbursement coverage, we are focusing on educating payors on the following *Oncotype DX* attributes:

*Test Performance.* *Oncotype DX* provides results that have been documented in clinical studies to be reproducible, sensitive, accurate and specific to the patient's tumor. Patients may benefit from treatment decisions based on prediction of the likelihood of recurrence, survival and chemotherapy benefit.

*Clinical Utility.* Patients are provided a Recurrence Score on a risk continuum that may contribute to decision making regarding the use of adjuvant chemotherapy. We believe the large difference in risk of



distant recurrence between tumors with low Recurrence Scores and high Recurrence Scores is indicative of the clinical utility of our test.

*Peer-reviewed Publication and Consistent Study Outcomes.* The 2003 NSABP validation study was peer-reviewed and published in *The New England Journal of Medicine* in December 2004. In May 2006, two peer-reviewed articles were published supporting the clinical validity of Oncotype DX and, therefore, the use and coverage of Oncotype DX. *The Journal of Cancer Oncology* published the results of the 2004 NSABP study supporting the predictive value of Oncotype DX on the likelihood of chemotherapy benefit. *Breast Cancer Research* published the results of the Kaiser Permanente study showing a significant correlation between the Oncotype DX recurrence score and breast cancer survival. Physicians and payors often require one, and many require two or more, peer-reviewed publications to provide a basis for use and reimbursement decisions. The results of the independent Kaiser Permanente study reinforce the findings in the NSABP study. We believe that additional publications, including our findings on the magnitude of chemotherapy benefit, will increase usage and create a more favorable reimbursement environment.

*Patient and Physician Demand.* Increasing awareness and demand in the cancer community for Oncotype DX will be necessary for widespread payor adoption. Increased usage of the test by physicians can influence payors and facilitate the reimbursement decision process.

*Improved Economics.* We are sponsoring third-party studies and providing information to payors to demonstrate the economic benefits that can result from the use of Oncotype DX. A health economic analysis of Oncotype DX was published in *The American Journal of Managed Care* in May 2005.

As a relatively new test, Oncotype DX may be considered investigational by payors and not covered under their reimbursement policies. Consequently, we have pursued case-by-case reimbursement and expect the test will continue to be reviewed on this basis until policy decisions have been made by individual payors. We are also working with public and private payors and health plans to secure coverage for Oncotype DX based upon clinical evidence showing the utility of the test. As of February 2007, health plans covering nearly 100 million lives have approved our test for coverage.

As of December 31, 2006, Aetna, Inc., Kaiser Foundation Health Plan, Inc. and National Heritage Insurance Company, or NHIC, the local Medicare carrier for California with jurisdiction for claims submitted by us for Medicare patients, had issued positive coverage determinations for Oncotype DX. In January 2007, United HealthCare Insurance Company entered into a national laboratory services agreement to support reimbursement for our test. In addition, many regional payors have issued policies supporting reimbursement for our test. These regional payors include Harvard Pilgrim Health Care, Inc., Medical Mutual of Ohio, Humana, Healthnet, Premera Blue Cross, Blue Cross/Blue Shield of Alabama, Blue Cross/Blue Shield of Minnesota, Blue Cross/Blue Shield of South Carolina, Mountain State Blue Cross, covering West Virginia, and CareFirst, covering Blue Cross of Delaware, Maryland and District of Columbia. The Federal Employees Health Benefits Program has also made a positive coverage determination for beneficiaries who are covered under their Blue Cross/Blue Shield plan option. Where policies are not in place, we pursue case-by-case reimbursement. Through this process, as of December 31, 2006, more than 500 health insurance companies, third-party administrators, provider networks and other health systems had reimbursed one or more Oncotype DX tests. We believe that it may take several years to achieve successful reimbursement with a majority of payors. However, we cannot predict whether, or under what circumstances, payors will reimburse for our tests. Payment amounts can also vary across individual policies and coverage and payment policies, when adopted, are generally applied prospectively rather than retroactively. Denial of coverage by payors, or payment at inadequate levels, would have a material adverse impact on market acceptance of our products.

In early 2005, the Medical Advisory Panel of the Blue Cross and Blue Shield Association's Technology Evaluation Center, or BCBSA, a technology assessment group, concluded that the existing clinical data in support of Oncotype DX does not meet the panel's technology criteria for clinical effectiveness and appropriateness. This assessment is provided for informational purposes to members of BCBSA and can be used by third-party payors and health care providers such as Blue Cross and Blue Shield, which provide healthcare coverage for nearly one-third of all Americans, as grounds to deny coverage for Oncotype DX. Other payors have determined that the test is "investigational" or have issued negative technology assessment reviews.

*Commercial Third-party Payors and Patient Pay.* Where there is a payor policy in place, we bill the payor and the patient in accordance with the established policy. Where there is no payor policy in place, we pursue reimbursement on behalf of each patient on a case-by-case basis. We request that physicians have a billing conversation with patients prior to a test being submitted to discuss the patient's responsibility should their policy not cover the test. We also request that the physician inform the patient that we will take on the primary responsibility for obtaining third-party reimbursement on behalf of patients, including appeals for initial denials, prior to billing a patient. With this practice established, we believe that most patients receiving the *Oncotype DX* test have agreed to the test knowing that they may be responsible for all or some portion of the cost of the test should their medical insurer deny or limit coverage. Our efforts on behalf of patients take a substantial amount of time, and bills may not be paid for many months, if at all. Furthermore, if a third-party payor denies coverage after final appeal, it may take a substantial amount of time to collect from the patient, and we may not be successful.

*Medicare and Medicaid.* In determining whether or not Medicare will pay for a test, the Centers for Medicare and Medicaid Services, or CMS, which oversees Medicare, can permit the contractors, who process and pay Medicare claims, to make that determination or it can make a national coverage determination, which will bind all Medicare contractors. To date, CMS has not issued a national coverage determination on *Oncotype DX*. As a result, whether or not Medicare will cover the test when billed by us is the decision of NHIC, the current local Medicare carrier for California and the contractor with jurisdiction to process claims submitted by us. In January 2006, NHIC released a local coverage determination providing coverage for the *Oncotype DX* test for female patients with estrogen-receptor positive, node-negative carcinoma of the breast when the ordering physician has determined, prior to ordering the test, that the intention to treat or not treat with adjuvant chemotherapy would be contingent, at least in part, on the results of the test for the individual patient in question. The local coverage determination was based upon a determination by NHIC that the *Oncotype DX* test is safe and effective and reasonable and necessary to contribute to breast cancer diagnosis and major treatment decisions. The local coverage determination indicated that case-by-case review may be performed, as needed, and the test will be covered only when ordered by the treating physician, when necessary for diagnosis or treatment decisions and when used in patient care. The local coverage determination states that the *Oncotype DX* test will be covered only when performed within six months of diagnosis of breast cancer and that the test will not be covered for male patients with breast cancer or for patients with recurrent or metastatic breast cancer who have had a previous *Oncotype DX* test. The local coverage determination is effective for *Oncotype DX* tests provided on or after February 27, 2006.

The local coverage determination explains that most or all coverage decisions for Medicare beneficiaries related to the *Oncotype DX* tests will be made by NHIC. Until recently, there had been some question as to whether claims for *Oncotype DX* tests performed on Medicare beneficiaries who were hospital inpatients at the time the tumor tissue samples were obtained may be billed by us to NHIC or must be incorporated in the payment that the hospital receives for their services related to the patient's breast cancer. As of December 31, 2006, the volume of patients who fell into this category represented a very small portion (approximately 2%) of our total testing population.

Based on a final rule effective January 1, 2007, we are permitted to submit claims to NHIC for the *Oncotype DX* tests performed on Medicare beneficiaries who were hospital inpatients or outpatients at the time the tumor tissue samples were obtained, but only if the test was ordered at least 14 days following the date of the patient's discharge from the hospital and where other specified conditions are met. We are in the process of making arrangements with hospitals for payment of the test when performed for the small portion of Medicare beneficiaries, representing approximately 3% of our total testing population, who are hospital inpatients or outpatients at the time specimens are collected and who do not meet criteria under the final rule for billing by us. Finally, we have been engaged in discussions with the Centers for Medicare/Medicaid Services, or CMS, about the application of the final rule to hospital outpatients. We believe the final rule should not apply to the *Oncotype DX* tests performed on tumor tissue samples obtained while the patient is a hospital outpatient, and that the tests performed on tissue samples taken from hospital outpatients are eligible to be billed by us under the Medicare program, regardless of when the testing of such tissue samples takes place. While we are continuing to pursue this matter, at this point, CMS intends for the final rule to apply to outpatients as well as inpatients, and we are notifying hospitals accordingly.



In addition, each state Medicaid program, which pays for services furnished to the eligible medically indigent, will usually make its own decision whether or not to cover *Oncotype DX*. To date, we have a limited number of approvals from state Medicaid programs.

Medicare currently contracts with a large number of fiscal intermediaries and carriers that are responsible for processing and paying claims. Within the next few years, Medicare is expected to reduce this number to fifteen regional Medical Administrative Contractors, or MACs. If NHIC is not selected as one of these regional MACs, we cannot be certain that we will obtain a positive local coverage determination from another contractor.

### ***Payment***

Clinical laboratory testing services, when covered by third-party payors, are paid under various methodologies, including prospective payment systems and fee schedules. Under Medicare, payment is generally made under the Clinical Laboratory Fee Schedule with amounts assigned to specific procedure billing codes. Each Medicare carrier jurisdiction has a fee schedule that establishes the price for each specific laboratory billing code. The Social Security Act establishes that these fee schedule amounts are to be increased annually by the percentage increase in the consumer price index, or CPI, for the prior year. Congress has frequently legislated that the CPI increase not be implemented. In the Medicare Prescription Drug, Improvement and Modernization Act, or MMA, Congress eliminated the CPI update through 2008. In addition, the National Limitation Amount, or NLA, which acts as a ceiling on Medicare reimbursement, is set at a percentage of the median of all the carrier fee schedule amounts for each test code. In the past, Congress has frequently lowered the percentage of the median used to calculate the NLA in order to achieve budget savings. Currently, the NLA ceiling is set at 74% of the medians for established tests and 100% of the median for diagnostic tests for which no limitation amount was established prior to 2001. Thus, no carrier can pay more than the NLA amount for any specific code.

At the present time, there is no specific Current Procedural Terminology (CPT) procedure code to report *Oncotype DX*. Therefore, the test generally must be reported under a non-specific, unlisted procedure code, which is subject to manual review of each claim. We have been informed by NHIC that, under the local coverage determination, we may expect claims to be paid consistent with the average allowed reimbursement rate for *Oncotype DX* claims that were billed and processed to completion as of September 30, 2005.

A Healthcare Common Procedure Coding System (HCPCS) code has been issued effective January 1, 2006 that some private third-party payors may accept on claims for the *Oncotype DX* test. Medicare will not accept this HCPCS code, however. In the future, we may move forward with plans to obtain specific CPT procedure coding. If we do move forward with plans to obtain specific CPT coding, there is no assurance that specific coding will be adopted or that adequate payment will be assigned if and when a specific procedure code is adopted.

Several provisions of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, or MMA, may affect future payments for clinical laboratory testing services, including *Oncotype DX*. First, the Clinical Laboratory Fee Schedule payments under Medicare are frozen through 2008 with zero-percent annual adjustment. This would affect Medicare and Medicaid payments for *Oncotype DX* if a specific procedure code and Clinical Laboratory Fee Schedule payment are assigned to the test. Second, Congress authorized the Medicare program to conduct a demonstration project on applying competitive bidding to certain clinical laboratory tests. It is not clear whether competitive bidding will be applied more broadly to clinical laboratory services under Medicare at some point in the future and, if so, whether this would impact payment for *Oncotype DX*, which is provided solely by us. Third, Medicare is reforming the local contractor process to replace current contracts with fiscal intermediaries, who are billed by hospitals and other institutional providers, and carriers, which are billed by physicians, independent laboratories and other suppliers, with new contracts. These reforms may result in a change in the contractors to whom we send Medicare claims, which may affect coverage for *Oncotype DX*. Finally, on several occasions, including in 2003 during the negotiations over the MMA, Congress has considered imposing a 20% co-insurance amount on clinical laboratory services, which would require beneficiaries to pay a portion of the cost of their clinical laboratory testing. Although that requirement has not been enacted at this time, Congress could decide to impose such an obligation at some point in the future. If so, it could make it more difficult for us to collect payment for *Oncotype DX*.

## Regulation

### *Clinical Laboratory Improvement Amendments of 1988*

As a clinical laboratory, we are required to hold certain federal, state and local licenses, certifications and permits to conduct our business. Under CLIA, we are required to hold a certificate applicable to the type of work we perform and to comply with standards covering personnel, facilities administration, quality systems and proficiency testing.

We have a certificate of accreditation under CLIA to perform testing and are accredited by CAP. To renew our CLIA certificate, we are subject to survey and inspection every two years to assess compliance with program standards. The standards applicable to the testing which we perform may change over time. We cannot assure you that we will be able to operate profitably should regulatory compliance requirements become substantially more costly in the future.

If our laboratory is out of compliance with CLIA requirements, we may be subject to sanctions such as suspension, limitation or revocation of our CLIA certificate, as well as directed plan of correction, state on-site monitoring, civil money penalties, civil injunctive suit or criminal penalties. We must maintain CLIA compliance and certification to be eligible to bill for services provided to Medicare beneficiaries. If we were to be found out of compliance with CLIA program requirements and subjected to sanction, our business could be harmed.

### *Food and Drug Administration*

The U.S. Food and Drug Administration, or FDA, regulates the sale or distribution, in interstate commerce, of medical devices, including in vitro diagnostic test kits. Devices subject to FDA regulation must undergo pre-market review prior to commercialization unless the device is of a type exempted from such review. In addition, manufacturers of medical devices must comply with various regulatory requirements under the Federal Food, Drug and Cosmetic Act and regulations promulgated under that Act, including quality system review regulations, unless exempted from those requirements for particular types of devices. Entities that fail to comply with FDA requirements can be liable for criminal or civil penalties, such as recalls, detentions, orders to cease manufacturing and restrictions on labeling and promotion.

Clinical laboratory services are not typically subject to FDA regulation, but in vitro diagnostic test kits and reagents and equipment used by these laboratories may be subject to FDA regulation. Clinical laboratory tests that are developed and validated by a laboratory for use in examinations the laboratory performs itself are called laboratory development tests, or LDTs. Most LDTs currently are not subject to pre-market review by FDA although analyte-specific reagents or software provided to clinical laboratories by third parties and used by clinical laboratories to perform LDTs may be subject to review by FDA prior to marketing. We believe that *Oncotype DX* is a type of LDT. We believe that *Oncotype DX* is not subject to regulation under current FDA policies and have communicated this conclusion to FDA staff. We believe that the container we provide for collection and transport of tumor samples from a pathology laboratory to our laboratory is a medical device subject to FDA regulation but exempt from pre-market review.

In January 2006, we received a letter from FDA regarding *Oncotype DX* inviting us to meet with FDA to discuss the nature and appropriate regulatory status of and the least burdensome ways that we may fulfill any FDA pre-market review requirements that may apply. In September 2006, FDA issued draft guidance on a new class of tests called "In Vitro Diagnostic Multivariate Index Assays." This draft guidance, which is intended for public comment, represents the first public discussion surrounding FDA's position regarding the regulation of certain laboratory-developed tests. Under this draft guidance, *Oncotype DX* could be classified as either a Class II or a Class III medical device, which may require varying levels of FDA pre-market review depending upon intended use and on the level of control necessary to assure the safety and effectiveness of the test. FDA held a public meeting on February 8, 2007 at which a number of interested parties commented on the draft guidance. The draft guidance was open for public comment until March 5, 2007.

We submitted formal comments in response to the draft guidance and we intend to continue our ongoing dialogue with FDA with respect to the regulatory status of the *Oncotype DX* breast cancer tests. We have presented information regarding *Oncotype DX* to FDA and continue to believe that our tests are appropriately regulated under

CLIA and should not require pre-market review by FDA. We cannot provide any assurance that FDA regulation, including pre-market review, will not be required in the future for *Oncotype DX*, either through new enforcement policies adopted by FDA or new legislation enacted by Congress. If pre-market review is required, our business could be negatively impacted until such review is completed and approval or clearance to market is obtained, and FDA could require that we stop selling our test pending pre-market approval. If our test is allowed to remain on the market but there is uncertainty about our test or if it is labeled investigational by FDA, orders or reimbursement may decline. The regulatory approval process may involve, among other things, successfully completing additional clinical trials and submitting a pre-market clearance notice or filing a pre-market approval application with FDA. If pre-market review is required by FDA, there can be no assurance that our test will be cleared or approved on a timely basis, if at all. Ongoing compliance with FDA regulations would increase the cost of conducting our business, subject us to inspection by FDA and to the requirements of FDA and penalties for failure to comply with these requirements. Notwithstanding the above, we may decide to voluntarily pursue FDA pre-market approval of *Oncotype DX* if we determine that doing so would be appropriate. Pursuing voluntary market review may, for example, facilitate third-party payor coverage for *Oncotype DX* test or serve to differentiate claims about the intended use of *Oncotype DX* from those of other tests.

Should any of the reagents obtained by us from vendors and used in conducting our LDT be affected by future regulatory actions, our business could be adversely affected by those actions, including increasing cost of testing or delaying, limiting or prohibiting the purchase of reagents necessary to perform testing.

### ***Health Insurance Portability and Accountability Act***

Under the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, the U.S. Department of Health and Human Services, or HHS, has issued regulations to protect the privacy and security of protected health information used or disclosed by health care providers, such as us. HIPAA also regulates standardization of data content, codes and formats used in health care transactions and standardization of identifiers for health plans and providers. Penalties for violations of HIPAA regulations include civil and criminal penalties.

We developed policies and procedures to comply with these regulations by the respective compliance enforcement dates. The requirements under these regulations may change periodically and could have an effect on our business operations if compliance becomes substantially more costly than under current requirements.

In addition to federal privacy regulations, there are a number of state laws governing confidentiality of health information that are applicable to our operations. New laws governing privacy may be adopted in the future as well. We have taken steps to comply with health information privacy requirements to which we are aware that we are subject. However, we can provide no assurance that we are or will remain in compliance with diverse privacy requirements in all of the jurisdictions in which we do business. Failure to comply with privacy requirements could result in civil or criminal penalties, which could have a materially adverse impact on our business.

### ***Federal and State Self-referral Prohibitions***

We are subject to the federal self-referral prohibitions commonly known as the Stark Law, and to similar restrictions under California's Physician Ownership and Referral Act, commonly known as PORA. Together these restrictions generally prohibit us from billing a patient or any governmental or private payor for any test when the physician ordering the test, or any member of such physician's immediate family, has an investment interest in, or compensation arrangement with, us, unless the arrangement meets an exception to the prohibition.

Both the Stark Law and PORA contain an exception for referrals made by physicians who hold investment interests in a publicly traded company that has stockholders' equity of \$75 million at the end of its most recent fiscal year or on average during the previous three fiscal years, and which satisfies certain other requirements. In addition, both the Stark Law and PORA contain an exception for compensation paid to a physician for personal services rendered by the physician. We have compensation arrangements with a number of physicians for personal services, such as speaking engagements and specimen tissue preparation. We have structured these arrangements with terms intended to comply with the requirements of the personal services exception to Stark and PORA. However, we can not be certain that regulators would find these arrangements to be in compliance with Stark, PORA or similar state

laws. We would be required to refund any payments we receive pursuant to a referral prohibited by these laws to the patient, the payor or the Medicare program, as applicable.

Sanctions for a violation of the Stark Law include the following:

- denial of payment for the services provided in violation of the prohibition;
- refunds of amounts collected by an entity in violation of the Stark Law;
- a civil penalty of up to \$15,000 for each service arising out of the prohibited referral;
- exclusion from federal healthcare programs, including the Medicare and Medicaid programs; and
- a civil penalty of up to \$100,000 against parties that enter into a scheme to circumvent the Stark Law's prohibition.

These prohibitions apply regardless of the reasons for the financial relationship and the referral. No finding of intent to violate the Stark Law is required for a violation. In addition, under an emerging legal theory, knowing violations of the Stark Law may also serve as the basis for liability under the Federal False Claims Act.

Further, a violation of PORA is a misdemeanor and could result in civil penalties and criminal fines. Finally, other states have self-referral restrictions with which we have to comply that differ from those imposed by federal and California law. While we have attempted to comply with the Stark Law, PORA and similar laws of other states, it is possible that some of our financial arrangements with physicians could be subject to regulatory scrutiny at some point in the future, and we cannot provide an assurance that we will be found to be in compliance with these laws following any such regulatory review.

#### ***Federal and State Anti-kickback Laws***

Federal Anti-kickback Law makes it a felony for a provider or supplier, including a laboratory, to knowingly and willfully offer, pay, solicit or receive remuneration, directly or indirectly, in order to induce business that is reimbursable under any federal health care program. A violation of the Anti-kickback Law may result in imprisonment for up to five years and fines of up to \$250,000 in the case of individuals and \$500,000 in the case of organizations. Convictions under the Anti-kickback Law result in mandatory exclusion from federal health care programs for a minimum of five years. In addition, HHS has the authority to impose civil assessments and fines and to exclude health care providers and others engaged in prohibited activities from the Medicare, Medicaid and other federal health care programs.

Actions which violate the Anti-kickback Law or similar laws may also involve liability under the Federal False Claims Act, which prohibits the knowing presentation of a false, fictitious or fraudulent claim for payment to the U.S. Government. Actions under the False Claims Act may be brought by the Department of Justice or by a private individual in the name of the government.

Although the Anti-kickback Law applies only to federal health care programs, a number of states, including California, have passed statutes substantially similar to the Anti-kickback Law pursuant to which similar types of prohibitions are made applicable to all other health plans and third-party payors. California's anti-kickback statute, commonly referred to as Section 650, has been interpreted by the California Attorney General and California courts in substantially the same way as the HHS and the courts have interpreted the Anti-kickback Law. A violation of Section 650 is punishable by imprisonment and fines of up to \$50,000.

Federal and state law enforcement authorities scrutinize arrangements between health care providers and potential referral sources to ensure that the arrangements are not designed as a mechanism to induce patient care referrals and opportunities. The law enforcement authorities, the courts and Congress have also demonstrated a willingness to look behind the formalities of a transaction to determine the underlying purpose of payments between health care providers and actual or potential referral sources. Generally, courts have taken a broad interpretation of the scope of the Anti-kickback Law, holding that the statute may be violated if merely one purpose of a payment arrangement is to induce future referrals.

In addition to statutory exceptions to the Anti-kickback Law, regulations provide for a number of safe harbors. If an arrangement meets the provisions of a safe harbor, it is deemed not to violate the Anti-kickback Law. An arrangement must fully comply with each element of an applicable safe harbor in order to qualify for protection. There are no safe harbors to California's Section 650.

Among the safe harbors that may be relevant to us is the discount safe harbor. The discount safe harbor applies to discounts provided by providers and suppliers, including laboratories, to clients with respect to Medicare, Medicaid, private pay or HMO patients, where the referring physician or institution bills the payor for the test, not when the service provider bills the payor directly. If the terms of the discount safe harbor are met, the discounts will not be considered prohibited remuneration under the Anti-kickback Law.

California does not have a discount safe harbor. However, certain licensees, such as hospitals or physicians, may only mark-up laboratory tests purchased by those licensees from a laboratory if certain disclosures are made to patients and third-party payors regarding the mark-up. Therefore, if and when we elect to offer discounts to California customers, including any hospital or physician, such discounts would not likely be viewed by regulators as prohibited under Section 650 because the mark-up would be disclosed by the customer to its buyer under California's mark-up laws. In contrast, any such discounts provided by us to our non-California customers would have to be analyzed under California's Section 650.

The personal services safe harbor to the Anti-kickback Law provides that remuneration paid to a referral source for personal services will not violate the Anti-kickback Law provided all of the elements of that safe harbor are met. One element is that, if the agreement is intended to provide for the services of the physician on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, and the exact charge for such intervals. Our personal services arrangements with some physicians did not meet the specific requirement of this safe harbor that the agreement specify exactly the schedule of the intervals of time to be spent on the services because the nature of the services, for example, speaking engagements, does not lend itself to exact scheduling and therefore meeting this element of the personal services safe harbor is impractical. Failure to meet the terms of the safe harbor does not render an arrangement illegal. Rather, an arrangement would not have the protections of the safe harbor if challenged by a regulator and, if necessary, the parties might be required to demonstrate why the arrangement does not violate the Anti-kickback Law.

While we believe that we are in compliance with the Anti-kickback Law and Section 650, there can be no assurance that our relationships with physicians, hospitals and other customers will not be subject to investigation or a successful challenge under such laws. If imposed for any reason, sanctions under the Anti-kickback Law and Section 650 could have a negative effect on our business.

#### ***Other Federal Fraud and Abuse Laws***

In addition to the requirements that are discussed above, there are several other health care fraud and abuse laws that could have an impact on our business. For example, provisions of the Social Security Act permit Medicare and Medicaid to exclude an entity that charges the federal health care programs substantially in excess of its usual charges for its services. The terms "usual charge" and "substantially in excess" are ambiguous and subject to varying interpretations.

Further, the Federal False Claims Act prohibits a person from knowingly submitting a claim or making a false record or statement in order to secure payment by the federal government. In addition to actions initiated by the government itself, the statute authorizes actions to be brought on behalf of the federal government by a private party having knowledge of the alleged fraud. Because the complaint is initially filed under seal, the action may be pending for some time before the defendant is even aware of the action. If the government is ultimately successful in obtaining redress in the matter or if the plaintiff succeeds in obtaining redress without the government's involvement, then the plaintiff will receive a percentage of the recovery. Finally, the Social Security Act includes its own provisions that prohibit the filing of false claims or submitting false statements in order to obtain payment. Violation of these provisions may result in fines, imprisonment or both, and possible exclusion from Medicare or Medicaid.



### ***California Laboratory Licensing***

In addition to federal certification requirements of laboratories under CLIA, licensure is required and maintained for our laboratory under California law. Such laws establish standards for the day-to-day operation of a clinical laboratory, including the training and skills required of personnel and quality control. In addition, California laws mandate proficiency testing, which involves testing of specimens that have been specifically prepared for the laboratory.

If our laboratory is out of compliance with California standards, the California Department of Health Services, or DHS, may suspend, restrict or revoke our license to operate our laboratory; assess substantial civil money penalties; or impose specific corrective action plans. Any such actions could materially affect our business. We maintain a current license in good standing with DHS. However, we cannot provide assurance that DHS will at all times in the future find us to be in compliance with all such laws.

### ***New York Laboratory Licensing***

Because we receive specimens from New York State, our clinical laboratory is required to be licensed by New York. We maintain such licensure for our laboratory under New York state laws and regulations, which establish standards for:

- day-to-day operation of a clinical laboratory, including training and skill levels required of laboratory personnel;
- physical requirements of a facility;
- equipment; and
- quality control.

New York law also mandates proficiency testing for laboratories licensed under New York state law, regardless of whether or not such laboratories are located in New York. If a laboratory is out of compliance with New York statutory or regulatory standards, the New York State Department of Health, or the DOH, may suspend, restrict or revoke the laboratory's New York license or assess civil money penalties. Statutory or regulatory noncompliance may result in a laboratory's being found guilty of a misdemeanor under New York law. Should we be found out of compliance with New York laboratory requirements, we could be subject to such sanctions, which could harm our business. We maintain a current license in good standing with the DOH. However, we cannot provide assurance that the DOH will at all times find us to be in compliance with all such laws.

### ***Other States' Laboratory Testing***

Florida, Maryland, Pennsylvania and Rhode Island require out-of-state laboratories which accept specimens from those states to be licensed. We have obtained licenses in those four states and believe we are in compliance with applicable licensing laws.

From time to time, we may become aware of other states that require out of state laboratories to obtain licensure in order to accept specimens from the state, and it is possible that other states do have such requirements or will have such requirements in the future. If we identify any other state with such requirements or if we are contacted by any other state advising us of such requirements, we intend to follow instructions from the state regulators as to how we should comply with such requirements.

### ***Patents and Proprietary Technology***

In order to remain competitive, we must develop and maintain protection on the proprietary aspects of our technologies. We rely on a combination of patent applications, copyrights, trademarks, trade secret laws and confidentiality, material data transfer agreements, licenses and invention assignment agreements to protect our intellectual property rights. We also rely upon unpatented trade secrets and improvements, unpatented know-how and continuing technological innovation to develop and maintain our competitive position. We generally protect this information with reasonable security measures.

As December 31, 2006, we had two issued patents, one of which was issued jointly to us and to the NSABP, and a number of pending U.S. patent applications, including provisional and non-provisional filings. Our issued patents expire in 2023 and 2024, respectively. Some of these U.S. patent applications also have corresponding pending applications under the Patent Cooperation Treaty in Canada, Europe, Japan and Australia. In these patent applications, we have either sole or joint ownership positions. In those cases where joint ownership positions were created, we have negotiated contractual provisions providing us with the opportunity to acquire exclusive rights under the patent applications. Under three patent applications, we have elected to allow exclusive options to lapse without exercising the option. The joint ownership agreements generally are in the form of material data transfer agreements that were executed at the onset of our collaborations with third parties.

Our patent applications relate to two main areas: gene expression technology methods, and gene markers for cancer recurrence and drug response in certain forms of cancer. We intend to file additional patent applications in the United States and abroad to strengthen our intellectual property rights. Our patent applications may not result in issued patents, and we cannot assure you that any patents that might issue will protect our technology. Any patents issued to us in the future may be challenged by third parties as being invalid or unenforceable, or third parties may independently develop similar or competing technology that are not covered by our patents. We cannot be certain that the steps we have taken will prevent the misappropriation of our intellectual property, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States.

We have received notices of claims of infringement, misappropriation or misuse of other parties' proprietary rights and may from time to time receive additional notices. Some of these claims may lead to litigation. We cannot assure you that we will prevail in these actions, or that other actions alleging misappropriation or misuse by us of third-party trade secrets, infringement by us of third-party patents and trademarks or the validity of patents issued to us in the future, will not be asserted or prosecuted against us, or that any assertions of misappropriation, infringement or misuse or prosecutions seeking to establish the validity of our patents will not materially or adversely affect our business, financial condition and results of operations.

An adverse determination in litigation or interference proceedings to which we may become a party relating to any patents issued to us in the future or any patents owned by third parties could subject us to significant liabilities to third parties or require us to seek licenses from third parties. Furthermore, if we are found to willfully infringe these patents, we could, in addition to other penalties, be required to pay treble damages. Although patent and intellectual property disputes in this area have often been settled through licensing or similar arrangements, costs associated with such arrangements may be substantial and could include ongoing royalties. We may be unable to obtain necessary licenses on satisfactory or commercially feasible terms, if at all. If we do not obtain necessary licenses, we may not be able to redesign *Oncotype DX* or other of our tests to avoid infringement, or such redesign may take considerable time, and force us to reassess our business plans. Adverse determinations in a judicial or administrative proceeding or failure to obtain necessary licenses could prevent us from manufacturing and selling *Oncotype DX* or other of our tests, which would have a significant adverse impact on our business.

All employees and technical consultants working for us are required to execute confidentiality agreements in connection with their employment and consulting relationships with us. Confidentiality agreements provide that all confidential information developed or made known to others during the course of the employment, consulting or business relationship shall be kept confidential except in specified circumstances. Agreements with employees provide that all inventions conceived by the individual while employed by us are our exclusive property. We cannot provide any assurance that employees and consultants will abide by the confidentiality or assignment terms of these agreements. Despite measures taken to protect our intellectual property, unauthorized parties might copy aspects of our technology or obtain and use information that we regard as proprietary.

### **Roche License Agreement**

We have obtained from Roche Molecular Systems, Inc. a non-exclusive license under a number of U.S. patents claiming nucleic acid amplification processes known as polymerase chain reaction, or PCR, homogeneous polymerase chain reaction, and reverse transcription polymerase chain reaction, or RT-PCR. We use these processes in our research and development and in the processing of our tests. The Roche license is limited to the performance of clinical laboratory services within the United States and Puerto Rico, and does not include the right to make or

sell products using the patented processes. The license continues as long as the underlying patent rights are in effect, but is subject to early termination by Roche under the following circumstances:

- a change in our ownership;
- a declaration of bankruptcy or insolvency, the making of an assignment for the benefit of our creditors, having a receiver appointed, or losing the federal or state licenses necessary for our operation;
- a change in our status to a non-profit entity or government institution; or
- our breach of or default under a material term of the license.

If the Roche license is terminated, we will be unable to use the licensed processes to conduct research and development or to perform our tests. As payment for the licenses granted to us, we make royalty payments to Roche consisting of a specified percentage of our net revenues.

### **Oxford Finance Agreements**

We have entered into a master security agreement and a number of promissory notes with Oxford Finance Corporation to finance equipment leases, computer and software leases and leasehold improvements. Under the master security agreement, we granted a security interest to Oxford in all of our goods, equipment, instruments and investment property. Events that would constitute a default by us under the master security agreement include, among others, our failure to pay an obligation when due, an attempt by us to sell, lease, transfer or encumber the collateral, our failure to maintain liability insurance as required by the agreement; our dissolving, becoming insolvent, filing for bankruptcy or having a receiver appointed, a change in our ownership or a material adverse change in our financial condition, business or operations.

If we default under the master security agreement, Oxford may declare all of our indebtedness under the promissory notes to be immediately due and payable.

The promissory notes provide that amounts borrowed will be repaid in periodic installments. Principal underlying promissory notes to finance equipment leases must be paid in 45 to 48 monthly installments, and principal underlying promissory notes to finance computer and software leases and leasehold improvements must be paid in 36 monthly installments. Prepayment of indebtedness under a promissory note is subject to a prepayment penalty and is allowed only after the first anniversary of the note. As of December 31, 2006, the outstanding principal amount under these promissory notes was \$7.3 million.

### **Research and Development Expenses**

Research and development expenses were \$12.8 million, \$9.5 million and \$10.0 million for the years ended December 31, 2006, 2005 and 2004, respectively.

### **Employees**

As of December 31, 2006, we had 191 employees. None of our employees are covered by collective bargaining arrangements, and our management considers its relationships with employees to be good.

### **Available Information**

Our website is located at [www.genomichealth.com](http://www.genomichealth.com). We make available free of charge on our website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports, as soon as reasonably practicable after we electronically file or furnish such materials to the Securities and Exchange Commission. Our website and the information contained therein or connected thereto are not intended to be incorporated into this Annual Report on Form 10-K.



**ITEM 1A. Risk Factors.**

**RISKS RELATED TO OUR COMPANY**

*We are an early stage company with a history of losses, and we expect to incur net losses for the foreseeable future.*

We have incurred substantial net losses since our inception. For the year ended December 31, 2006, we incurred a net loss of \$28.9 million. From our inception in August 2000 through December 31, 2006, we had an accumulated deficit of approximately \$125.1 million. To date, we have not, and we may never, achieve revenues sufficient to offset expenses. We expect to devote substantially all of our resources to continue commercializing our existing test, Oncotype DX, and to develop future tests.

We expect to incur additional losses in future years, and we may never achieve profitability. In addition, we have only recently begun to commercialize Oncotype DX and do not expect our losses to be substantially mitigated by revenues from Oncotype DX or future products, if any, for a number of years.

*We expect to continue to incur significant research and development expenses, which may make it difficult for us to achieve profitability.*

In recent years, we have incurred significant costs in connection with the development of Oncotype DX. Our research and development expenses were \$12.8 million for the year ended December 31, 2006. We expect our research and development expense levels to remain high for the foreseeable future as we seek to enhance our existing test and develop new tests. As a result, we will need to generate significant revenues in order to achieve profitability. Our failure to achieve profitability in the future could cause the market price of our common stock to decline.

*If third-party payors, including managed care organizations and Medicare, do not provide reimbursement or rescind their reimbursement policies for Oncotype DX, its commercial success could be compromised.*

Oncotype DX has a list price of \$3,460. Physicians and patients may decide not to order Oncotype DX unless third-party payors, such as managed care organizations as well as government payors such as Medicare and Medicaid, pay a substantial portion of the test's price. There is significant uncertainty concerning third-party reimbursement of any test incorporating new technology, including Oncotype DX. Reimbursement by a third-party payor may depend on a number of factors, including a payor's determination that tests using our technologies are:

- not experimental or investigational,
- medically necessary,
- appropriate for the specific patient,
- cost-effective, and
- supported by peer-reviewed publications.

Since each payor makes its own decision as to whether to establish a policy to reimburse, seeking these approvals is a time-consuming and costly process. To date, we have secured policy-level reimbursement approval from only a limited number of third-party payors and have a limited number of approvals for state Medicaid programs. We cannot be certain that coverage for Oncotype DX will be provided in the future by any third-party payors.

Several entities conduct technology assessments of new medical tests and devices and provide the results of their assessments for informational purposes to other parties. These assessments may be used by third-party payors and health care providers such as Blue Cross and Blue Shield, which provide healthcare coverage for nearly one-third of all Americans, as grounds to deny coverage for a test or procedure. Oncotype DX has received negative assessments and may receive additional negative assessments in the future. For example, in early 2005, the Medical Advisory Panel of the Blue Cross and Blue Shield Association's Technology Evaluation Center, a technology

assessment group, concluded that the existing clinical data in support of *Oncotype DX* did not meet the panel's technology criteria for clinical effectiveness and appropriateness.

In January 2006, NHIC, the California Medicare contractor with responsibility for processing and paying claims submitted by us, released a local coverage determination providing coverage for *Oncotype DX* when used in accordance with the terms of the determination. The local coverage determination is effective for *Oncotype DX* tests provided on or after February 27, 2006. Until recently, there had been some question as to whether claims for *Oncotype DX* tests performed on Medicare beneficiaries who were hospital inpatients at the time the tumor tissue samples were obtained may be billed by us to NHIC or must be incorporated in the payment that the hospital receives for their services related to the patient's breast cancer. As of December 31, 2006, the volume of patients who fell into this category represented a very small portion (approximately 2%) of our total testing population.

Based on a final rule effective January 1, 2007, we are permitted to submit claims to NHIC for the *Oncotype DX* tests performed on Medicare beneficiaries who were hospital inpatients or outpatients at the time the tumor tissue samples were obtained, but only if the test was ordered at least 14 days following the date of the patient's discharge from the hospital and where other specified conditions are met. We are in the process of making arrangements with hospitals for payment of the test when performed for the small portion of Medicare beneficiaries, representing approximately 3% of our total testing population, who are hospital inpatients or outpatients at the time specimens are collected and who do not meet criteria under the final rule for billing by us. Finally, we have been engaged in discussions with the Centers for Medicare/Medicaid Services, or CMS, about the application of the final rule to hospital outpatients. We believe the final rule should not apply to the *Oncotype DX* tests performed on tumor tissue samples obtained while the patient is a hospital outpatient, and that the tests performed on tissue samples taken from hospital outpatients are reimbursable under the Medicare program, regardless of when the testing of such tissue samples takes place. While we are continuing to pursue this matter, at this point, CMS intends for the final rule to apply to outpatients as well as inpatients, and we are notifying hospitals accordingly.

Insurers, including managed care organizations as well as government payors such as Medicare, have increased their efforts to control the cost, utilization and delivery of health care services. From time to time, Congress has considered and implemented changes in the Medicare fee schedules in conjunction with budgetary legislation, most recently in February 2006. Further reductions of reimbursement for Medicare services may be implemented from time to time. Reductions in the reimbursement rates of other third-party payors have occurred and may occur in the future. These measures have resulted in reduced prices, added costs and decreased test utilization for the clinical laboratory industry.

Medicare currently contracts with a large number of fiscal intermediaries and carriers that are responsible for processing and paying claims. Within the next few years, Medicare is expected to reduce this number to fifteen regional Medical Administrative Contractors, or MACs. If NHIC is not selected as one of these regional MACs, we cannot be certain that we will obtain a positive local coverage determination from another contractor.

If we are unable to obtain reimbursement approval from private payors and Medicare and Medicaid programs for *Oncotype DX*, or if the amount reimbursed is inadequate, our ability to generate revenues from *Oncotype DX* could be limited. Even if we are being reimbursed, insurers may cancel their contracts with us at any time or stop paying for our test which would reduce our revenue.

***If the U.S. Food and Drug Administration, or FDA, were to begin regulating our test, we could be forced to stop sales of Oncotype DX, we could experience significant delays in commercializing any future products, we could incur substantial costs and time delays associated with meeting requirements for pre-market approval or we could experience decreased demand for or reimbursement of our test.***

Clinical laboratory tests like *Oncotype DX* are regulated under the Clinical Laboratory Improvement Amendments of 1988, or CLIA, as administered through the CMS, as well as by applicable state laws. Diagnostic kits that are sold and distributed through interstate commerce are regulated as medical devices by FDA. Clinical laboratory tests that are developed and validated by a laboratory for its own use are called laboratory development tests, or LDTs. Most LDTs currently are not subject to FDA regulation, although reagents or software provided by third parties and used to perform LDTs may be subject to regulation. We believe that *Oncotype DX* is not a diagnostic kit and also believe that it is an LDT. As a result, we believe *Oncotype DX* should not be subject to

regulation under established FDA policies. The container we provide for collection and transport of tumor samples from a pathology laboratory to our laboratory is a medical device subject to FDA regulation but is currently exempt from pre-market review by FDA.

In January 2006, we received a letter from FDA regarding *Oncotype DX* inviting us to meet with FDA to discuss the nature and appropriate regulatory status of and the least burdensome ways that we may fulfill any FDA pre-market review requirements that may apply. In September 2006, FDA issued draft guidance on a new class of tests called “In Vitro Diagnostic Multivariate Index Assays.” This draft guidance, which is intended for public comment, represents the first public discussion surrounding FDA’s position regarding the regulation of certain laboratory-developed tests. Under this draft guidance, *Oncotype DX* could be classified as either a Class II or a Class III medical device, which may require varying levels of FDA pre-market review depending upon intended use and on the level of control necessary to assure the safety and effectiveness of the test. The draft guidance was open for public comment until March 5, 2007, during which time we and others had the opportunity to comment on their proposed guidelines. In addition, FDA held a public meeting on February 8, 2007 at which several interested parties commented on the draft guidance.

We cannot provide any assurance that FDA regulation, including pre-market review, will not be required in the future for *Oncotype DX*, either through new enforcement policies adopted by FDA or new legislation enacted by Congress. If pre-market review is required, our business could be negatively impacted until such review is completed and approval or clearance to market is obtained, and FDA could require that we stop selling our test pending pre-market approval. If our test is allowed to remain on the market but there is uncertainty about our test or if it is labeled investigational by FDA, orders or reimbursement may decline. The regulatory approval process may involve, among other things, successfully completing additional clinical trials and submitting a pre-market clearance notice or filing a pre-market approval application with FDA. If pre-market review is required by FDA, there can be no assurance that our test will be cleared or approved on a timely basis, if at all. Ongoing compliance with FDA regulations would increase the cost of conducting our business, and subject us to inspection by FDA and to the requirements of FDA and penalties for failure to comply with these requirements. Notwithstanding the above, we may decide voluntarily to pursue FDA pre-market review of *Oncotype DX* if we determine that doing so would be appropriate.

Should any of the reagents obtained by us from vendors and used in conducting our LDT be affected by future regulatory actions, our business could be adversely affected by those actions, including increasing cost of testing or delaying, limiting or prohibiting the purchase of reagents necessary to perform testing.

***If we were required to conduct additional clinical trials prior to marketing our test, those trials could lead to delays or failure to obtain necessary regulatory approvals and harm our ability to become profitable.***

If FDA decides to regulate our test, it may require extensive pre-market clinical testing prior to submitting a regulatory application for commercial sales. If we are required to conduct pre-market clinical trials, whether using prospectively acquired samples or archival samples, delays in the commencement or completion of clinical testing could significantly increase our test development costs and delay commercialization. Many of the factors that may cause or lead to a delay in the commencement or completion of clinical trials may also ultimately lead to delay or denial of regulatory approval. The commencement of clinical trials may be delayed due to insufficient patient enrollment, which is a function of many factors, including the size of the patient population, the nature of the protocol, the proximity of patients to clinical sites and the eligibility criteria for the clinical trial. We may find it necessary to engage contract research organizations to perform data collection and analysis and other aspects of our clinical trials, which might increase the cost and complexity of our trials. We may also depend on clinical investigators, medical institutions and contract research organizations to perform the trials properly. If these parties do not successfully carry out their contractual duties or obligations or meet expected deadlines, or if the quality, completeness or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols or for other reasons, our clinical trials may have to be extended, delayed or terminated. Many of these factors would be beyond our control. We may not be able to enter into replacement arrangements without undue delays or considerable expenditures. If there are delays in testing or approvals as a result of the failure to perform by third parties, our research and development costs would increase, and we may not be able to obtain regulatory

approval for our test. In addition, we may not be able to establish or maintain relationships with these parties on favorable terms, if at all. Each of these outcomes would harm our ability to market our test, or to become profitable.

***Complying with numerous regulations pertaining to our business is an expensive and time-consuming process, and any failure to comply could result in substantial penalties.***

We are subject to CLIA, a federal law that regulates clinical laboratories that perform testing on specimens derived from humans for the purpose of providing information for the diagnosis, prevention or treatment of disease. CLIA is intended to ensure the quality and reliability of clinical laboratories in the United States by mandating specific standards in the areas of personnel qualifications, administration, and participation in proficiency testing, patient test management, quality control, quality assurance and inspections. We have a current certificate of accreditation under CLIA to perform testing. To renew this certificate, we are subject to survey and inspection every two years. Moreover, CLIA inspectors may make random inspections of our laboratory.

We are also required to maintain a license to conduct testing in California. California laws establish standards for day-to-day operation of our clinical laboratory, including the training and skills required of personnel and quality control. Moreover, several states require that we hold licenses to test specimens from patients residing in those states. Other states have similar requirements or may adopt similar requirements in the future. Finally, we may be subject to regulation in foreign jurisdictions as we seek to expand international distribution of our test.

If we were to lose our CLIA accreditation or California license, whether as a result of a revocation, suspension or limitation, we would no longer be able to sell *Oncotype DX*, which would limit our revenues and harm our business. If we were to lose our license in other states where we are required to hold licenses, we would not be able to test specimens from those states.

We are subject to other regulation by both the federal government and the states in which we conduct our business, including:

- Medicare billing and payment regulations applicable to clinical laboratories;
- the federal Medicare and Medicaid Anti-kickback Law and state anti-kickback prohibitions;
- the federal physician self-referral prohibition, commonly known as the Stark Law, and the state equivalents;
- the federal Health Insurance Portability and Accountability Act of 1996;
- the Medicare civil money penalty and exclusion requirements; and
- the federal civil and criminal False Claims Act.

The risk of our being found in violation of these laws and regulations is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Any action brought against us for violation of these laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If our operations are found to be in violation of any of these laws and regulations, we may be subject to any applicable penalty associated with the violation, including civil and criminal penalties, damages, fines, we could be required to refund payments received by us, and we could be required to curtail or cease our operations. Any of the foregoing consequences could seriously harm our business and our financial results.

***Our financial results depend on sales of one test, *Oncotype DX*, and we will need to generate sufficient revenues from this and other tests to run our business.***

For the foreseeable future, we expect to derive substantially all of our revenues from sales of one test, *Oncotype DX*. We have been selling this test since January 2004. We are in various stages of research and development for other tests that we may offer as well as for enhancements to our existing test. We do not currently expect to commercialize tests for colon cancer until 2009, and we are not currently able to estimate when we may be able to commercialize tests for other cancers or whether we will be successful in doing so. If we are unable to increase sales of *Oncotype DX* or to successfully develop and commercialize other tests or enhancements, our revenues and our ability to achieve profitability would be impaired, and the market price of our common stock could decline.

***We may experience limits on our revenues if physicians decide not to order our test.***

If medical practitioners do not order Oncotype DX or any future tests developed by us, we will likely not be able to create demand for our products in sufficient volume for us to become profitable. To generate demand, we will need to continue to make oncologists, surgeons and pathologists aware of the benefits of Oncotype DX and any products we may develop in the future through published papers, presentations at scientific conferences and one-on-one education by our sales force. In addition, we will need to demonstrate our ability to obtain adequate reimbursement coverage from third-party payors.

Existing guidelines and practices regarding the treatment of breast cancer recommend that chemotherapy be considered in most cases, including many cases in which our test may indicate that, based on our clinical trial results, chemotherapy is of little or no benefit. Accordingly, physicians may be reluctant to order a test that may suggest recommending against chemotherapy in treating breast cancer where current guidelines recommend consideration of such treatment. Moreover, our test provides quantitative information not currently provided by pathologists and it is performed at our facility rather than by the pathologist in a local laboratory, so pathologists may be reluctant to order or support our test. These facts may make it difficult for us to convince medical practitioners to order Oncotype DX for their patients, which could limit our ability to generate revenues and our ability to achieve profitability.

***We may experience limits on our revenues if patients decide not to use our test.***

Some patients may decide not to order our test due to its list price of \$3,460, part or all of which may be payable directly by the patient if the applicable payor denies reimbursement in full or in part. Even if medical practitioners recommend that their patients use our test, patients may still decide not to use Oncotype DX, either because they do not want to be made aware of the likelihood of recurrence or they wish to pursue a particular course of therapy regardless of test results. If only a small portion of the patient population decides to use our test, we will experience limits on our revenues and our ability to achieve profitability.

***If we are unable to develop products to keep pace with rapid technological, medical and scientific change, our operating results and competitive position would be harmed.***

In recent years, there have been numerous advances in technologies relating to the diagnosis and treatment of cancer. For example, technologies in addition to ours now reportedly permit measurement of gene expression in fixed, paraffin embedded tissue specimens. Also, new hormonal therapies such as aromatase inhibitors are viewed by physicians as promising therapies for breast cancer with more tolerable side effects than those associated with tamoxifen, the hormonal therapy commonly used today in treatment. For advanced cancer, new chemotherapeutic strategies are being developed that may increase survival time and reduce toxic side effects. These advances require us continuously to develop new products and enhance existing products to keep pace with evolving standards of care. Our test could become obsolete unless we continually innovate and expand our product to demonstrate recurrence and treatment benefit in patients treated with new therapies. New treatment therapies typically have only a few years of clinical data associated with them, which limits our ability to perform clinical studies and correlate sets of genes to a new treatment's effectiveness. If we are unable to demonstrate the applicability of our test to new treatments, then sales of our test could decline, which would harm our revenues.

***Our rights to use technologies licensed from third parties are not within our control, and we may not be able to sell our products if we lose our existing rights or cannot obtain new rights on reasonable terms.***

We license from third parties technology necessary to develop our products. For example, we license technology from Roche Molecular Systems, Inc. that we use to analyze genes for possible inclusion in our tests and that we use in our laboratory to conduct our test. In return for the use of a third party's technology, we may agree to pay the licensor royalties based on sales of our products. Royalties are a component of cost of product revenues and impact the margin on our test. We may need to license other technology to commercialize future products. Our business may suffer if these licenses terminate, if the licensors fail to abide by the terms of the license or fail to prevent infringement by third parties, if the licensed patents or other rights are found to be invalid or if we are unable to enter into necessary licenses on acceptable terms.



***Our competitive position depends on maintaining intellectual property protection.***

Our ability to compete and to achieve and maintain profitability depends on our ability to protect our proprietary discoveries and technologies. We currently rely on a combination of patent applications, copyrights, trademarks, trade secret laws and confidentiality agreements, material data transfer agreements, license agreements and invention assignment agreements to protect our intellectual property rights. We also rely upon unpatented know-how and continuing technological innovation to develop and maintain our competitive position. Patents may be granted to us jointly with other organizations, and while we may have a right of first refusal, we cannot guarantee that a joint owner will not license rights to another party.

As December 31, 2006, we had two issued patents, one of which was issued jointly to us and to the NSABP. Our pending patent applications may not result in issued patents, and we cannot assure you that our issued patent or any patents that might ultimately be issued by the U.S. Patent and Trademark Office will protect our technology. Any patents that may be issued to us might be challenged by third parties as being invalid or unenforceable, or third parties may independently develop similar or competing technology that avoids our patents. We cannot be certain that the steps we have taken will prevent the misappropriation and use of our intellectual property, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States.

From time to time, the United States Supreme Court, other federal courts, U.S. Congress or the U.S. Patent and Trademark Office may change the standards of patentability and any such changes could have a negative impact on our business.

***We may face intellectual property infringement claims that could be time-consuming and costly to defend and could result in our loss of significant rights and the assessment of treble damages.***

We have received notices of claims of infringement, misappropriation or misuse of other parties' proprietary rights and may from time to time receive additional notices. Some of these claims may lead to litigation. We cannot assure you that we will prevail in these actions, or that other actions alleging misappropriation or misuse by us of third-party trade secrets, infringement by us of third-party patents and trademarks or the validity of our patents, will not be asserted or prosecuted against us. We may also initiate claims to defend our intellectual property. Intellectual property litigation, regardless of outcome, is expensive and time-consuming, could divert management's attention from our business and have a material negative effect on our business, operating results or financial condition. If there is a successful claim of infringement against us, we may be required to pay substantial damages (including treble damages if we were to be found to have willfully infringed a third party's patent) to the party claiming infringement, develop non-infringing technology, stop selling our test or using technology that contains the allegedly infringing intellectual property or enter into royalty or license agreements that may not be available on acceptable or commercially practical terms, if at all. Our failure to develop non-infringing technologies or license the proprietary rights on a timely basis could harm our business. In addition, revising our test to include the non-infringing technologies would require us to re-validate our test, which would be costly and time consuming. Also, we may be unaware of pending patent applications that relate to our test. Parties making infringement claims on future issued patents may be able to obtain an injunction that would prevent us from selling our or using technology that contains the allegedly infringing intellectual property, which could harm our business.

There are a number of patents and patent applications that may constitute prior art in the field of genomic-based diagnostics. We may be required to pay royalties, damages and costs to firms who own the rights to these patents, or we might be restricted from using any of the inventions claimed in those patents.

***If we are unable to compete successfully, we may be unable to increase or sustain our revenues or achieve profitability.***

Our principal competition comes from existing diagnostic methods used by pathologists and oncologists. These methods have been used for many years and are therefore difficult to change or supplement. In addition, companies offering capital equipment and kits or reagents to local pathology laboratories represent another source of potential competition. These kits are used directly by the pathologist, which facilitates adoption more readily than tests like *Oncotype DX* that are performed outside the pathology laboratory. In addition, few diagnostic methods are as expensive as *Oncotype DX*.

We also face competition from many from companies that offer products or have conducted research to profile gene expression in breast cancer, including Agendia B.V. and AviaraDX. Commercial laboratories with strong distribution networks for diagnostic tests, such as Genzyme Corporation, Laboratory Corporation of America Holdings and Quest Diagnostics Incorporated, may become competitors. Other potential competitors include companies that develop diagnostic tests such as Bayer Healthcare LLC, Celera Genomics, a business segment of Applera Corporation, Roche Diagnostics, a division of F. Hoffmann-La Roche Ltd, and Veridex LLC, a Johnson & Johnson company, other small companies and academic and research institutions. Our competitors may invent and commercialize technology platforms that compete with ours. In addition, in December 2005, the federal government allocated a significant amount funding to The Cancer Genome Atlas, a project aimed at developing a comprehensive catalog of the genetic mutations and other genomic changes that occur in cancers and maintaining the information in a free public database. As more information regarding cancer genomics becomes available to the public, we anticipate that more products aimed at identifying targeted treatment options will be developed and these products may compete with ours.

Our test is currently considered relatively expensive for a diagnostic test, and we expect to raise prices in the future. This could impact reimbursement of and demand for *Oncotype DX*. Many of our present and potential competitors have widespread brand recognition and substantially greater financial and technical resources and development, production and marketing capabilities than we do. Others may develop lower-priced, less complex tests that could be viewed by physicians and payors as functionally equivalent to our test, which could force us to lower the list price of our test and impact our operating margins and our ability to achieve profitability. Some competitors have developed tests cleared for marketing by FDA. There may be a marketing differentiation or perception that an FDA-cleared test is more desirable than *Oncotype DX*, and that may discourage adoption and reimbursement. If we are unable to compete successfully against current or future competitors, we may be unable to increase market acceptance for and sales of our test, which could prevent us from increasing or sustaining our revenues or achieving or sustaining profitability and could cause the market price of our common stock to decline.

***Our research and development efforts will be hindered if we are not able to contract with third parties for access to archival tissue samples.***

Under standard clinical practice in the United States, tumor biopsies removed from patients are chemically preserved and embedded in paraffin wax and stored. Our clinical development relies on our ability to secure access to these archived tumor biopsy samples, as well as information pertaining to their associated clinical outcomes. Others have demonstrated their ability to study archival samples and often compete with us for access. Additionally, the process of negotiating access to archived samples is lengthy since it typically involves numerous parties and approval levels to resolve complex issues such as usage rights, institutional review board approval, privacy rights, publication rights, intellectual property ownership and research parameters. If we are not able to negotiate access to archival tumor tissue samples with hospitals and collaborators, or if other laboratories or our competitors secure access to these samples before us, our ability to research, develop and commercialize future products will be limited or delayed.

***If we cannot maintain our current clinical collaborations and enter into new collaborations, our product development could be delayed.***

We rely on and expect to continue to rely on clinical collaborators to perform a substantial portion of our clinical trial functions. If any of our collaborators were to breach or terminate its agreement with us or otherwise fail to conduct its collaborative activities successfully and in a timely manner, the research, development or commercialization of the products contemplated by the collaboration could be delayed or terminated. If any of our collaboration agreements is terminated, or if we are unable to renew those collaborations on acceptable terms, we would be required to seek alternative collaborations. We may not be able to negotiate additional collaborations on acceptable terms, if at all, and these collaborations may not be successful.

In the past, we have entered into clinical trial collaborations with highly regarded organizations in the cancer field, including the National Surgical Adjuvant Breast and Bowel Project, or NSABP, and Northern California Kaiser Permanente. Our success in the future depends in part on our ability to enter into agreements with other leading cancer organizations. This can be difficult due to internal and external constraints placed on these organizations. Some organizations may limit the number of collaborations they have with any one company so as to not be perceived as biased or conflicted. Organizations may also have insufficient administrative and related infrastructure to enable

collaborations with many companies at once, which can extend the time it takes to develop, negotiate and implement a collaboration. Additionally, organizations often insist on retaining the rights to publish the clinical data resulting from the collaboration. The publication of clinical data in peer-reviewed journals is a crucial step in commercializing and obtaining reimbursement for a test such as ours, and our inability to control when, if ever, results are published may delay or limit our ability to derive sufficient revenues from any product that may result from a collaboration.

From time to time we expect to engage in discussions with potential clinical collaborators which may or may not lead to collaborations. However, we cannot guarantee that any discussions will result in clinical collaborations or that any clinical studies which may result will be enrolled or completed in a reasonable time frame or with successful outcomes. Once news of discussions regarding possible collaborations are known in the medical community, regardless of whether the news is accurate, failure to announce a collaborative agreement or the entity's announcement of a collaboration with an entity other than us may result in adverse speculation about us, our product or our technology, resulting in harm to our reputation and our business.

***New test development involves a lengthy and complex process, and we may be unable to commercialize any of the tests we are currently developing.***

We have multiple tests in various stages of development and devote considerable resources to research and development. For example, we are currently in the development stage of the application of our technology to predict recurrence and the therapeutic benefit of chemotherapy in colon cancer, and we are conducting early development studies in N+ prostate, renal cell and lung cancers and melanoma. Our N+ breast cancer program is being considered for a move to the validation phase with *Oncotype DX* during 2007. There can be no assurance that our technologies will be capable of reliably predicting the recurrence of other cancers, such as colon and those cancers, with the sensitivity and specificity necessary to be clinically and commercially useful for the treatment of other cancers, or that we can develop those technologies at all. In addition, before we can develop diagnostic tests for new cancers and commercialize any new products, we will need to:

- conduct substantial research and development;
- conduct validation studies;
- expend significant funds; and
- develop and scale-up our laboratory processes.

This process involves a high degree of risk and takes several years. Our product development efforts may fail for many reasons, including:

- failure of the product at the research or development stage;
- difficulty in accessing archival tissue samples, especially tissue samples with known clinical results; or
- lack of clinical validation data to support the effectiveness of the product.

Few research and development projects result in commercial products, and success in early clinical trials often is not replicated in later studies. At any point, we may abandon development of a product candidate or we may be required to expend considerable resources repeating clinical trials, which would adversely impact the timing for generating potential revenues from those product candidates. In addition, as we develop products, we will have to make significant investments in product development, marketing and selling resources. If a clinical validation study fails to demonstrate the prospectively defined endpoints of the study, we would likely abandon the development of the product or product feature that was the subject of the clinical trial, which could harm our business.

***The loss of key members of our senior management team or our inability to retain highly skilled scientists, clinicians and salespeople could adversely affect our business.***

Our success depends largely on the skills, experience and performance of key members of our executive management team and others in key management positions. The efforts of each of these persons together will be critical to us as we continue to develop our technologies and testing processes and as we attempt to transition to a



company with more than one commercialized product. If we were to lose one or more of these key employees, we may experience difficulties in competing effectively, developing our technologies and implementing our business strategies.

Our research and development programs and commercial laboratory operations depend on our ability to attract and retain highly skilled scientists and technicians, including geneticists, licensed laboratory technicians, chemists, biostatisticians and engineers. We may not be able to attract or retain qualified scientists and technicians in the future due to the intense competition for qualified personnel among life science businesses, particularly in the San Francisco Bay Area. We also face competition from universities and public and private research institutions in recruiting and retaining highly qualified scientific personnel. In addition, our success depends on our ability to attract and retain salespeople with extensive experience in oncology and close relationships with medical oncologists, surgeons, pathologists and other hospital personnel. We may have difficulties locating, recruiting or retaining qualified salespeople, which could cause a delay or decline in the rate of adoption of our products. If we are not able to attract and retain the necessary personnel to accomplish our business objectives, we may experience constraints that will adversely affect our ability to support our discovery, development and sales programs. All of our employees are at-will employees, which means that either we or the employee may terminate their employment at any time.

***If our sole laboratory facility becomes inoperable, we will be unable to perform our test and our business will be harmed.***

We do not have redundant laboratory facilities. We perform all of our diagnostic testing in our laboratory located in Redwood City, California. Redwood City is situated on or near earthquake fault lines. Our facility and the equipment we use to perform our tests would be costly to replace and could require substantial lead time to repair or replace. The facility may be harmed or rendered inoperable by natural or man-made disasters, including earthquakes, flooding and power outages, which may render it difficult or impossible for us to perform our tests for some period of time. The inability to perform our tests may result in the loss of customers or harm our reputation, and we may be unable to regain those customers in the future. Although we possess insurance for damage to our property and the disruption of our business, this insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, or at all.

In order to rely on a third party to perform our tests, we could only use another facility with established state licensure and CLIA accreditation under the scope of which *Oncotype DX* could be performed following validation and other required procedures. We cannot assure you that we would be able to find another CLIA-certified facility willing to adopt *Oncotype DX* and comply with the required procedures, or that this laboratory would be willing to perform the tests for us on commercially reasonable terms. In order to establish a redundant laboratory facility, we would have to spend considerable time and money securing adequate space, constructing the facility, recruiting and training employees, and establishing the additional operational and administrative infrastructure necessary to support a second facility. Additionally, any new clinical laboratory facility opened by us would be subject to certification under CLIA and licensed by several states, including California and New York, which can take a significant amount of time and result in delays in our ability to begin operations.

***Changes in healthcare policy could subject us to additional regulatory requirements that may interrupt commercialization of *Oncotype DX* and increase our costs.***

Healthcare policy has been a subject of extensive discussion in the executive and legislative branches of the federal and many state governments. We developed our commercialization strategy for *Oncotype DX* based on existing healthcare policies. Changes in healthcare policy, such as the creation of broad limits for diagnostic products in general or requirements that Medicare patients pay for portions of tests or services received, could substantially interrupt the sales of *Oncotype DX*, increase costs and divert management's attention. For example, in 1989, the U.S. Congress passed federal self-referral prohibitions commonly known as the Stark Law, significantly restricting, regulating and changing laboratories' relationships with physicians. We cannot predict what changes, if any, will be proposed or adopted or the effect that such proposals or adoption may have on our business, financial condition and results of operations.

***We rely on a limited number of suppliers or, in some cases, a sole supplier, for some of our laboratory instruments and materials and may not be able to find replacements in the event our supplier no longer supplies that equipment.***

We rely solely on Applied Biosystems, a division of Applera Corporation, to supply some of the laboratory equipment on which we perform our tests. We periodically forecast our needs for laboratory equipment and enter into standard purchase orders with Applied Biosystems based on these forecasts. We believe that there are relatively few equipment manufacturers other than Applied Biosystems that are currently capable of supplying the equipment necessary for *Oncotype DX*. Even if we were to identify other suppliers, there can be no assurance that we will be able to enter into agreements with such suppliers on a timely basis on acceptable terms, if at all. If we should encounter delays or difficulties in securing from Applied Biosystems the quality and quantity of equipment we require for *Oncotype DX*, we may need to reconfigure our test process, which would result in delays in commercialization or an interruption in sales. If any of these events occur, our business and operating results could be harmed. Additionally, if Applied Biosystems deems us to have become uncreditworthy, it has the right to require alternative payment terms from us, including payment in advance. We are also required to indemnify Applied Biosystems against any damages caused by any legal action or proceeding brought by a third party against Applied Biosystems for damages caused by our failure to obtain required approval with any regulatory agency.

We also rely on a several sole suppliers for certain laboratory materials which we use to perform our tests. While we have developed alternate sourcing strategies for these materials, we can not be certain that these strategies will be effective. If we should encounter delays or difficulties in securing these laboratory materials, delays in commercialization or an interruption in sales could occur.

***If we are unable to support demand for our test, our business may suffer.***

We have limited experience in processing our test and even more limited experience in processing large volumes of tests. We recently completed the expansion of our clinical laboratory facilities and have ramped up our testing capacity. We have begun to implement increases in scale and related processing, customer service, billing and systems process improvements, and to expand our internal quality assurance program to support testing on a larger scale. We will also need additional certified laboratory scientists and other scientific and technical personnel to process our tests. We cannot assure you that any increases in scale, related improvements and quality assurance will be successfully implemented or that appropriate personnel will be available. Failure to implement necessary procedures or to hire the necessary personnel could result in higher cost of processing or an inability to meet market demand. Since we have limited experience handling large volumes of *Oncotype DX* tests, there can be no assurance that we will be able to perform tests on a timely basis at a level consistent with demand. If we encounter difficulty meeting market demand for *Oncotype DX*, our reputation could be harmed and our future prospects and our business could suffer.

***We may be unable to manage our future growth effectively, which would make it difficult to execute our business strategy.***

Future growth will impose significant added responsibilities on management, including the need to identify, recruit, train and integrate additional employees. In addition, rapid and significant growth will place strain on our administrative and operational infrastructure, including customer service and our clinical laboratory. Our ability to manage our operations and growth will require us to continue to improve our operational, financial and management controls, reporting systems and procedures. If we are unable to manage our growth effectively, it may be difficult for us to execute our business strategy.

***If we were sued for product liability, we could face substantial liabilities that exceed our resources.***

The marketing, sale and use of our test could lead to the filing of product liability claims if someone were to allege that our test failed to perform as it was designed. We may also be subject to liability for errors in the information we provide to customers or for a misunderstanding of, or inappropriate reliance upon, the information we provide. A product liability claim could result in substantial damages and be costly and time consuming for us to defend. Although we believe that our existing product liability insurance is adequate, we cannot assure you that our insurance would fully protect us from the financial impact of defending against product liability claims. Any

product liability claim brought against us, with or without merit, could increase our insurance rates or prevent us from securing insurance coverage in the future. Additionally, any product liability lawsuit could cause injury to our reputation, result in the recall of our products, or cause current collaborators to terminate existing agreements and potential collaborators to seek other partners, any of which could impact our results of operations.

***If we use biological and hazardous materials in a manner that causes injury, we could be liable for damages.***

Our activities currently require the controlled use of potentially harmful biological materials, hazardous materials and chemicals and may in the future require the use of radioactive compounds. We cannot eliminate the risk of accidental contamination or injury to employees or third parties from the use, storage, handling or disposal of these materials. In the event of contamination or injury, we could be held liable for any resulting damages, and any liability could exceed our resources or any applicable insurance coverage we may have. Additionally, we are subject on an ongoing basis to federal, state and local laws and regulations governing the use, storage, handling and disposal of these materials and specified waste products. The cost of compliance with these laws and regulations might be significant and could negatively affect our operating results.

***Our dependence on distributors for foreign sales of Oncotype DX could limit or prevent us from selling our test in foreign markets and from realizing long-term international revenue growth.***

International sales as a percentage of net revenues are expected to remain minimal in the near term as we focus our efforts on the sale of Oncotype DX in the United States. We have established an exclusive distribution network to sell Oncotype DX in Israel and may enter into other similar arrangements in other countries in the future. Over the long term, we intend to grow our business internationally, and to do so we will need to attract additional distributors to expand the territories in which we sell Oncotype DX. Distributors may not commit the necessary resources to market and sell Oncotype DX to the level of our expectations. If current or future distributors do not perform adequately, or we are unable to locate distributors in particular geographic areas, we may not realize long-term international revenue growth.

***We may acquire other businesses or form joint ventures that could harm our operating results, dilute your ownership of us, increase our debt or cause us to incur significant expense.***

As part of our business strategy, we may pursue acquisitions of complementary businesses and assets, as well as technology licensing arrangements. We also may pursue strategic alliances that leverage our core technology and industry experience to expand our product offerings or distribution. We have no experience with respect to acquiring other companies and limited experience with respect to the formation of collaborations, strategic alliances and joint ventures. If we make any acquisitions, we may not be able to integrate these acquisitions successfully into our existing business, and we could assume unknown or contingent liabilities. Any future acquisitions by us also could result in significant write-offs or the incurrence of debt and contingent liabilities, any of which could harm our operating results. Integration of an acquired company also may require management resources that otherwise would be available for ongoing development of our existing business. We may not identify or complete these transactions in a timely manner, on a cost-effective basis, or at all, and we may not realize the anticipated benefits of any acquisition, technology license, strategic alliance or joint venture.

To finance any acquisitions, we may choose to issue shares of our common stock as consideration, which would dilute your interest in us. If the price of our common stock is low or volatile, we may not be able to acquire other companies for stock. Alternatively, it may be necessary for us to raise additional funds for acquisitions through public or private financings. Additional funds may not be available on terms that are favorable to us, or at all.

***Our inability to raise additional capital on acceptable terms in the future may limit our ability to develop and commercialize new tests and technologies.***

We expect capital outlays and operating expenditures to increase over the next several years as we expand our infrastructure, commercial operations and research and development activities. Specifically, we may need to raise capital to, among other things:

sustain commercialization of our initial test or enhancements to that test;

increase our selling and marketing efforts to drive market adoption and address competitive developments;  
further expand our clinical laboratory operations;  
expand our technologies into other areas of cancer;  
fund our clinical validation study activities;  
expand our research and development activities;  
acquire or license technologies; and  
finance capital expenditures and our general and administrative expenses.

Our present and future funding requirements will depend on many factors, including:

the level of research and development investment required to maintain and improve our technology position;  
costs of filing, prosecuting, defending and enforcing patent claims and other intellectual property rights;  
our need or decision to acquire or license complementary technologies or acquire complementary businesses;  
changes in product development plans needed to address any difficulties in commercialization;  
changes in the regulatory environment, including any decision by FDA to regulate our activities;  
competing technological and market developments;  
the rate of progress in establishing reimbursement arrangements with third-party payors; and  
changes in regulatory policies or laws that affect our operations.

If we raise funds by issuing equity securities, dilution to our stockholders could result. Any equity securities issued also may provide for rights, preferences or privileges senior to those of holders of our common stock. If we raise funds by issuing debt securities, these debt securities would have rights, preferences and privileges senior to those of holders of our common stock, and the terms of the debt securities issued could impose significant restrictions on our operations. If we raise funds through collaborations and licensing arrangements, we might be required to relinquish significant rights to our technologies or products, or grant licenses on terms that are not favorable to us. If adequate funds are not available, we may have to scale back our operations or limit our research and development activities.

***We must implement additional and expensive finance and accounting systems, procedures and controls as we grow our business and organization and to satisfy new reporting requirements, which will increase our costs and require additional management resources.***

As a public reporting company, we are required to comply with the Sarbanes-Oxley Act of 2002 and the related rules and regulations of the Securities and Exchange Commission, including expanded disclosures and accelerated reporting requirements and more complex accounting rules. Compliance with Section 404 and other requirements has increased our costs and required additional management resources. We have upgraded our finance and accounting systems, procedures and controls and will need to continue to implement additional finance and accounting systems, procedures and controls as we grow our business and organization and to satisfy existing reporting requirements. If we fail to maintain or implement adequate controls, if we are unable to complete the required Section 404 assessment as to the adequacy of our internal control over financial reporting in future Form 10-K filings, or if our independent registered public accounting firm is unable to provide us with an unqualified report as to the effectiveness of our internal control over financial reporting in future Form 10-K filings, our ability to obtain additional financing could be impaired. In addition, investors could lose confidence in the reliability of our internal control over financial reporting and in the accuracy of our periodic reports filed under the Exchange Act. A lack of investor confidence in the reliability and accuracy of our public reporting could cause our stock price to decline.

**ITEM 1B. *Unresolved Staff Comments.***

None.

**ITEM 2. *Properties.***

At December 31, 2006, we occupied approximately 48,000 square feet of laboratory and office space. On January 3, 2007, we entered into a lease agreement for an additional 48,000 square feet of office space, which we intend to occupy in March 2007. We believe that these facilities are adequate to meet our business requirements for the near-term and that additional space, when needed, will be available on commercially reasonable terms.

**ITEM 3. *Legal Proceedings.***

We were not a party to any legal proceedings other than in the ordinary course of our business at December 31, 2006, or at the date of this report.

**ITEM 4. *Submission of Matters to a Vote of Security Holders.***

No matters were submitted to a vote of security holders during the fourth quarter of 2006.

**Executive Officers**

The names of our executive officers and their ages as of March 1, 2007, are as follows:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Randal W. Scott, Ph.D.	49	Chief Executive Officer and Chairman of the Board
Kimberly J. Popovits	48	President, Chief Operating Officer and Director
Joffre B. Baker, Ph.D.	59	Chief Scientific Officer
Steven Shak, M.D.	56	Chief Medical Officer
G. Bradley Cole	51	Executive Vice President, Chief Financial Officer and Secretary

*Randal W. Scott, Ph.D.*, has served as our Chairman of the Board and Chief Executive Officer since our inception in August 2000 and served as President from August 2000 until February 2002, Chief Financial Officer from December 2000 until April 2004, and Secretary from August 2000 until December 2000 and from May 2003 until February 2005. Dr. Scott was a founder of Incyte Corporation, a genomic information company, and served Incyte in various roles, including Chairman of the Board from August 2000 to December 2001, President from January 1997 to August 2000, and Chief Scientific Officer from March 1995 to August 2000. Dr. Scott holds a B.S. in Chemistry from Emporia State University and a Ph.D. in Biochemistry from the University of Kansas.

*Kimberly J. Popovits* has served as our President and Chief Operating Officer since February 2002 and as a director since March 2002. From November 1987 to February 2002, Ms. Popovits served in various roles at Genentech, Inc., a biotechnology company, most recently serving as Senior Vice President, Marketing and Sales from February 2001 to February 2002, and as Vice President, Sales from October 1994 to February 2001. Prior to joining Genentech, she served as Division Manager, Southeast Region, for American Critical Care, a Division of American Hospital Supply, a supplier of health care products to hospitals. Ms. Popovits is a director of Nuvelo, Inc., a biotechnology company. Ms. Popovits holds a B.A. in Business from Michigan State University.

*Joffre B. Baker, Ph.D.*, has served as our Chief Scientific Officer since December 2000. From March 1997 to October 2000, Dr. Baker served as the Vice President for Research Discovery at Genentech. From March 1993 to October 2000, Dr. Baker oversaw Research Discovery at Genentech, which includes the Departments of Cardiovascular Research, Oncology, Immunology, Endocrinology, and Pathology. From July 1991 to October 1993, he served as Genentech's Director of Cardiovascular Research. Prior to joining Genentech, Dr. Baker was a member of the faculty of the Department of Biochemistry at the University of Kansas. He holds a B.S. in Biology and Chemistry from the University of California, San Diego and a Ph.D. in Biochemistry from the University of Hawaii.

*Steven Shak, M.D.*, has served as our Chief Medical Officer since December 2000. From July 1996 to October 2000, Dr. Shak served in various roles in Medical Affairs at Genentech, most recently as Senior Director and Staff Clinical Scientist. From November 1989 to July 1996, Dr. Shak served as a Director of Discovery Research at Genentech, where he was responsible for Pulmonary Research, Immunology, and Pathology. Prior to joining Genentech, Dr. Shak was an Assistant Professor of Medicine and Pharmacology at the New York University School





of Medicine. Dr. Shak holds a B.A. in Chemistry from Amherst College and an M.D. from the New York University School of Medicine, and completed his post-doctoral training at the University of California, San Francisco.

G. Bradley Cole has served as our Executive Vice President and Chief Financial Officer since July 2004 and our Secretary from February 2005. From December 1997 to May 2004, he served in various positions at Guidant Corporation, a medical device company, most recently serving as Vice President, Finance and Business Development for the Endovascular Solutions Group from January 2001 until May 2004. From July 1994 to December 1997, Mr. Cole was Vice President, Finance and Chief Financial Officer of Endovascular Technologies, Inc., a medical device company that was acquired by Guidant Corporation. From December 1988 to February 1994, he served as Vice President, Finance and Chief Financial Officer of Applied Biosystems Incorporated, a life sciences systems company. Mr. Cole holds a B.S. in Business from Biola University and an M.B.A. from San Jose State University.

## PART II

### ITEM 5. *Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.*

(a) Our common stock is traded on the NASDAQ Global Market under the symbol "GHDX" and has been trading since our initial public offering on September 29, 2005. The following table sets forth the range of high and low sale prices for our common stock, based on the last daily sale, in each of the quarters since our stock began trading:

	2006			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Stock price – high	\$16.70	\$11.77	\$14.64	\$23.89
Stock price – low	\$9.11	\$9.92	\$10.86	\$13.79

	2005			
	First Quarter	Second Quarter	Third Quarter(1)	Fourth Quarter
Stock price – high	n/a	n/a	\$11.75	\$11.69
Stock price – low	n/a	n/a	\$11.55	\$8.81

(1) From September 29, 2005

According to the records of our transfer agent, we had 156 stockholders of record as of March 1, 2007.

We have never declared or paid any cash dividends on our capital stock, and we do not currently intend to pay any cash dividends on our common stock in the foreseeable future. We expect to retain future earnings, if any, to fund the development and growth of our business. Our board of directors will determine future cash dividends, if any. There are currently no contractual restrictions on our ability to pay dividends.

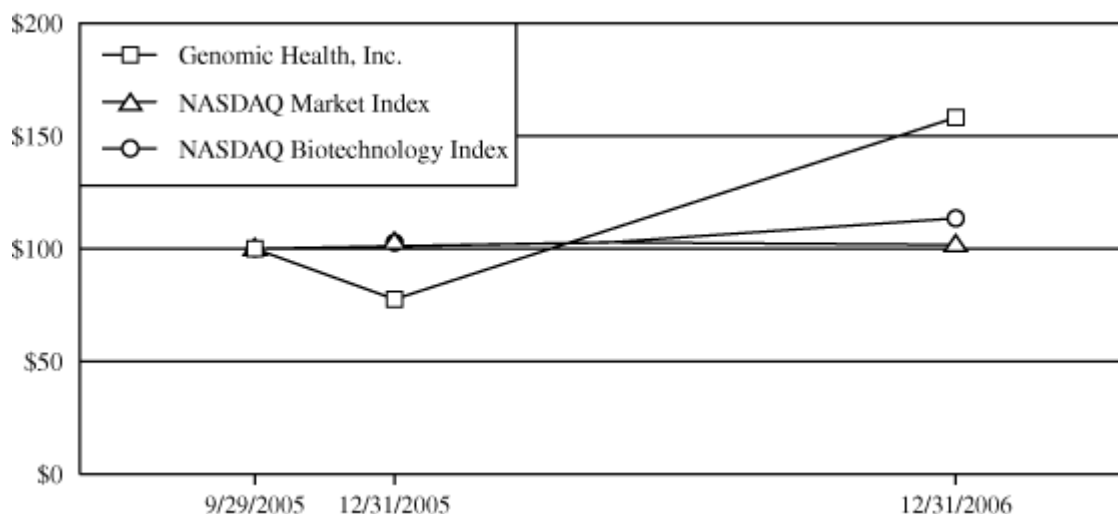
(b) On September 28, 2005, a Registration Statement on Form S-1 (File No. 333-126626) relating to our initial public offering was declared effective by the SEC. The closing was on October 4, 2005 and the net offering proceeds to us were approximately \$53.5 million. Through December 31, 2006, \$29.1 million of the net proceeds were used to build our commercial capabilities in selling and marketing related to *Oncotype DX*, \$15.3 million were used to fund research and development programs for *Oncotype DX* and in other cancers, and \$6.8 million were used to expand facilities and laboratory operations capacity and for information systems infrastructure and no funds were used for working capital and general corporate purposes. A portion of the net proceeds may also be used for working capital and general corporate purposes and to acquire or invest in complementary businesses, technologies, services or products. Pending use for these or other purposes, net proceeds have been invested in interest bearing, investment grade securities.

**Stock Performance Graph**

The following information is not deemed to be “soliciting material” or to be “filed” with the Securities and Exchange Commission or subject to Regulation 14A or 14C under the Securities Exchange Act of 1934 or to the liabilities of Section 18 of the Securities Exchange Act of 1934, and will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent we specifically incorporate it by reference into such a filing.

Set forth below is a line graph showing the cumulative total stockholder return (change in stock price plus reinvested dividends) assuming the investment of \$100 on September 29, 2005 (the day of our initial public offering) in each of our common stock, the NASDAQ Market Index and the NASDAQ Biotechnology Index for the period commencing on September 29, 2005 and ending on December 31, 2006. The comparisons in the table are required by the Securities and Exchange Commission and are not intended to forecast or be indicative of future performance of our common stock.

**COMPARISON OF CUMULATIVE TOTAL RETURN  
AMONG GENOMIC HEALTH INC.,  
NASDAQ MARKET AND NASDAQ BIOTECH INDEX**



	September 29, 2005	December 31, 2005	December 31, 2006
Genomic Health, Inc.	\$ 100.00	\$ 77.53	\$ 158.30
NASDAQ Market Index	\$ 100.00	\$ 102.81	\$ 101.72
NASDAQ Biotechnology Index	\$ 100.00	\$ 102.67	\$ 113.47

**ITEM 6. Selected Financial Data.**

The following selected consolidated financial data should be read together with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this report. The selected consolidated balance sheet data at December 31, 2006 and 2005 and the selected consolidated statements of operations data for each year ended December 31, 2006, 2005 and 2004 have been derived from our audited consolidated financial statements that are included elsewhere in this report. The selected consolidated balance sheet data at December 31, 2004, 2003 and 2002 and the selected consolidated statements of operations data for each year ended December 31, 2003 and 2002 have been derived from our audited consolidated financial statements not included in this report. Historical results are not necessarily indicative of the results to be expected in the future.

	Year Ended December 31,				
	2006	2005	2004	2003	2002
(In thousands, except share and per share data)					
<b>Consolidated Statements of Operations</b>					
<b>Data:</b>					
Revenues:					
Product revenues	\$27,006	\$4,823	\$227	\$–	\$–
Contract revenues	2,168	379	100	125	–
Total revenues	29,174	5,202	327	125	–
Operating expenses(1):					
Cost of product revenues	9,908	6,249	1,828	–	–
Research and development	12,841	9,465	10,040	9,069	7,053
Selling and marketing	24,625	15,348	9,856	2,805	754
General and administrative	12,765	6,485	3,869	3,686	3,753
Total operating expenses	60,139	37,547	25,593	15,560	11,560
Loss from operations	(30,965 )	(32,345 )	(25,266 )	(15,435 )	(11,560 )
Interest and other income (expense), net	2,045	984	271	185	492
Net loss	\$(28,920 )	\$(31,361 )	\$(24,995 )	\$(15,250 )	\$(11,068 )
Basic and diluted net loss per share	\$(1.18 )	\$(4.15 )	\$(13.82 )	\$(12.43 )	\$(11.95 )
Shares used in computing basic and diluted net loss per share	24,508,845	7,557,106	1,808,022	1,226,444	925,814

(1) Includes non-cash charges for stock-based compensation expense as follows:

	Year Ended December 31,				
	2006	2005	2004	2003	2002
(In thousands)					
Cost of product revenues	\$167	\$53	\$5	\$ –	\$ –
Research and development	821	323	42	–	–
Selling and marketing	779	274	38	–	–
General and administrative	1,137	426	106	–	–
	<u>\$2,904</u>	<u>\$1,076</u>	<u>\$191</u>	<u>\$ –</u>	<u>\$ –</u>

On January 1, 2006, we adopted Statement of Financial Accounting Standard No. 123R, *Share-based Payment*, using the modified prospective method. Prior to 2006, stock-based compensation was recognized in accordance with Accounting Principles Board Opinion No. 25.

	At December 31,				
	2006	2005	2004	2003	2002
	(In thousands)				
<b>Consolidated Balance Sheets Data:</b>					
Cash and cash equivalents	\$14,926	\$18,839	\$38,275	\$11,062	\$25,318
Short-term investments	29,289	50,688	–	–	–
Working capital	37,535	65,801	36,771	10,046	25,165
Total assets	58,024	75,799	41,538	13,096	27,376
Notes payable, short-term	2,547	1,052	–	161	163
Notes payable, long-term	4,726	2,621	–	–	150
Convertible preferred stock	–	–	103,212	51,064	51,073
Accumulated deficit	(125,103)	(96,183)	(64,822)	(39,827)	(24,577)
Total stockholders' equity (deficit)	41,829	67,517	(64,154)	(39,547)	(24,502)

#### ITEM 7. *Management's Discussion and Analysis of Financial Condition and Results of Operation*

*The following discussion of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes included in Item 8 for this Annual Report on Form 10-K. Historical results are not necessarily indicative of future results.*

##### **Business Overview**

We are a life science company focused on the development and commercialization of genomic-based clinical diagnostic tests for cancer that allow physicians and patients to make individualized treatment decisions. Our first test, *Oncotype DX*, is used for early stage breast cancer patients to predict the likelihood of cancer recurrence, the likelihood of patient survival and the likelihood of chemotherapy benefit. All tumor samples are sent to our laboratory in Redwood City, California for analysis. Upon generation and delivery of a Recurrence Score report to the physician, we generally bill third-party payors for *Oncotype DX*. The list price of our test is \$3,460.

We launched *Oncotype DX* in January 2004 and initially made sales to a select number of physicians in a few markets in the United States through a small direct sales force. Late in 2004 and continuing into 2006, we experienced a significant increase in demand for *Oncotype DX*. For the year ended December 31, 2006, more than 14,500 tests were delivered for use in treatment planning, compared to more than 7,000 and more than 500 tests delivered for the years ended December 31, 2005 and 2004, respectively. Since the commercial launch of *Oncotype DX* more than 21,500 tests have been delivered for use in treatment planning by more than 5,000 physicians. We believe increased demand in 2005 resulted from the publication of our validation study in *The New England Journal of Medicine* and the presentation of our chemotherapy benefit study at the San Antonio Breast Cancer Symposium, both of which occurred in December 2004. We also experienced increased demand in 2006 following clinical presentations at major symposia in December 2005 and February 2006, as well as the May 2006 publication of two peer-reviewed articles supporting the use and reimbursement of *Oncotype DX*. The expansion of our domestic field sales organization in July 2006 also increased demand for our test. However, this increased demand is not necessarily indicative of future growth rates, and we cannot assure you that this level of increased demand can be sustained or that future appearances or presentations at medical conferences or publication of articles will have similar impact on demand for *Oncotype DX*. Moreover, we believe that each year we may experience decreased demand for our test in the summer months of July and August, which may be attributed to physicians, surgeons and patients scheduling vacations during this time. As of December 31, 2006, our laboratory had the capacity to process up to 7,000 tests per fiscal quarter.

We believe the key factors that will drive broader adoption of *Oncotype DX* will be acceptance by healthcare providers of its clinical benefits, demonstration of the cost-effectiveness of using our test, expanded reimbursement by third-party payors, expansion of our sales force and increased marketing efforts. Reimbursement of *Oncotype DX* by third-party payors is essential to our commercial success. In general, clinical laboratory services, when covered, are paid under various methodologies, including prospective payment systems and fee schedules.

Reimbursement from payors depends upon whether a test covered under the patient's policy and if payment practices for the test have been established. As a relatively new test, *Oncotype DX* may be considered investigational by payors and not covered under current reimbursement policies. Until we reach agreement with a payor on contract terms or a payor establishes a policy for payment of *Oncotype DX*, we recognize revenue on a cash basis.

Upon commercialization of *Oncotype DX*, we began working with third-party payors to establish reimbursement coverage policies. As of December 31, 2006, Aetna, Inc., Kaiser Foundation Health Plan, Inc. and National Heritage Insurance Company (NHIC), the local Medicare carrier for California with jurisdiction for claims submitted by us for Medicare patients, had issued positive coverage determinations for *Oncotype DX*. In January 2007, United HealthCare Insurance Company entered into a national laboratory services agreement to supporting reimbursement for our test. In addition, many regional payors had issued policies supporting reimbursement for our test. Where contracts or policies are not in place, we pursue case-by-case reimbursement. We believe that as much as 20% of our future test volume may be derived from Medicare patients. We are working with many payors to establish policy-level reimbursement which, if in place, should allow us to recognize revenues upon completing our test and submitting an invoice. We do not expect to recognize the majority of revenues in this manner until late 2007, at the earliest.

In early February 2006, we obtained our first reimbursement coverage outside of the United States. Clalit Health Care, the largest government payor in Israel, covering 60% of the population, established a reimbursement coverage policy for *Oncotype DX* for their patients. *Oncotype DX* is currently offered for sale in Israel under a testing and services agreement with a third party. Tests ordered in Israel are processed in our Redwood City, California central reference laboratory.

Effective December 2005, we entered into collaborative agreements with Aventis, Inc., a member of the sanofi-aventis group, and the Eastern Cooperative Oncology Group to investigate the ability of gene expression in fixed-paraffin-embedded tissues to predict the likelihood of response to adjuvant chemotherapy, including Taxotere, in patients with early breast cancer and zero to three involved lymph nodes. The agreements provide Genomic Health with commercial rights to diagnostic tests that may result from the collaboration and were effective as of December 1, 2005. We began to recognize revenue under these agreements in the first quarter of 2006.

We are continuing to work on extending *Oncotype DX* for breast cancer into N+ and ER- populations. During 2007, we may introduce single gene information for ER and PR genes into the *Oncotype DX* patient report to provide better information for improved treatment decision making. Also during 2007, we plan to conduct further studies using *Oncotype DX* in N+ patients which, if successful, could result in a product offering sometime in 2008.

In July 2005 we signed a collaborative agreement with National Surgical Adjuvant Breast and Bowel Project, or NSABP, to begin work in colon cancer using our clinical development platform. This is the same group with which we conducted our successful clinical validation studies in breast cancer which led to our development of *Oncotype DX*. The agreement requires certain payments to be made by us during the research and development period. If the collaboration results in a commercial product, we will be required to make additional payments upon first commercial sale and during commercialization of the product. At the American Society of Clinical Oncology meeting in June 2006, a study conducted with the NSABP was presented demonstrating correlation between gene expression and colon cancer recurrence in patients with stage II and III colon cancer treated with surgery. These data support additional studies and development of an *Oncotype DX* test for colon cancer. During 2006, we entered into additional agreements with NSABP and other academic institutions to further our clinical studies in colon cancer, including arrangements for a clinical validation study.

In July 2005 we signed a collaborative agreement with Bristol-Myers Squibb Company and ImClone Systems Incorporated to develop a genomic test to predict the likelihood of response to Erbitux in colorectal cancer. Erbitux is a targeted therapy currently approved for the treatment of metastatic colorectal cancer. The agreement provides for research funding support and milestone payments and gives us commercial rights to diagnostic tests that may result from the collaboration.

In December 2006, we finalized a collaborative agreement to sponsor a research project to validate a pre-specified gene panel and algorithm that will be used to predict clinical outcomes for stage II colon cancer patients treated either with surgery alone or surgery plus chemotherapy. The agreement requires certain payments to be

made by us during the research and development period. If the collaboration results in a commercial product, we will be required to make additional payments upon first commercial sale and during commercialization of the product.

We are continuing to conduct research and early development studies in a variety of cancers other than breast cancer and in January 2007 announced the decision to move our colon program for Stage I and Stage II cancer patients into full scale development.

Since our inception, we have generated significant net losses. As of December 31, 2006, we had an accumulated deficit of \$125.1 million. We incurred net losses of \$28.9 million, \$31.4 million and \$25.0 million for the years ended December 31, 2006, 2005, and 2004, respectively. We expect our net losses to continue for at least the next two years. We anticipate that a substantial portion of our capital resources and efforts over the next several years will be focused on research and development, both to develop additional tests for breast cancer and to develop tests for other cancers, to scale up our commercial organization, and for other general corporate purposes. Our financial results will be limited by a number of factors, including establishment of coverage policies by third-party insurers and government payors, our ability in the short term to collect from payors often requiring a case-by-case manual appeals process, and our ability to recognize revenues other than from cash collections on tests billed until such time as reimbursement policies or contracts are in effect. Until we receive routine reimbursement and are able to record revenues as tests are performed and reports delivered, we are likely to continue reporting net losses.

## **Financial Operations Overview**

### ***Revenues***

We derive our revenues from product sales and contract research arrangements. We operate in one industry segment. Our product revenues are derived solely from the sale of our *Oncotype DX* test. Payors are billed upon generation and delivery of a Recurrence Score report to the physician. Product revenues are recorded on a cash basis unless a contract or policy is in place with the payor at the time of billing and collectibility is reasonably assured. Contract revenues are derived from studies conducted with biopharmaceutical and pharmaceutical companies and are recorded on an accrual basis as contractual obligations are completed.

### ***Cost of Product Revenues***

Cost of product revenues represents the cost of materials, direct labor, costs associated with processing tissue samples including histopathology, anatomical pathology, paraffin extraction, reverse transcription polymerase chain reaction, or RT-PCR, and quality control analyses, license fees and delivery charges necessary to render an individualized test result. Costs associated with performing our test are recorded as tests are processed. License fees are recorded at the time product revenues are recognized or in accordance with other contractual obligations. License fees represent a significant component of our cost of product revenues and are expected to remain so for the foreseeable future.

### ***Research and Development Expenses***

Research and development expenses represent costs incurred to develop our technology and to carry out our clinical studies to validate our multi-gene tests and include salaries and benefits, allocated overhead and facility occupancy costs, contract services and other outside costs, and costs to acquire in-process research and development projects and technologies that have no alternative future use. Research and development expenses also include costs related to activities performed under contracts with biopharmaceutical and pharmaceutical companies.

We charge all research and development expenses to operations as they are incurred. All potential future product programs outside of breast and colon cancer are in the early development phase. The expected time frame in which a test for one of these other cancers can be brought to market is uncertain given the technical challenges and clinical variables that exist between different types of cancers.



We do not record or maintain information regarding costs incurred in research and development on a program or project specific basis. Our research and development staff and associated infrastructure resources are deployed across several programs. Many of our costs are thus not attributable to individual programs. We believe that allocating costs on the basis of time incurred by our employees does not accurately reflect the actual costs of a project.

As a result of the uncertainties discussed above, we are unable to determine the duration and completion costs of our research and development programs or when, if ever, and to what extent we will receive cash inflows from the commercialization and sale of a product.

### ***Selling and Marketing Expenses***

Our selling and marketing expenses consist primarily of personnel costs and education and promotional expenses associated with *Oncotype DX*. These expenses include the costs of educating physicians, laboratory personnel and other healthcare professionals regarding our genomic technologies, how our *Oncotype DX* test was developed and validated and the value of the quantitative information that *Oncotype DX* provides. Selling and marketing expenses also include the costs of sponsoring continuing medical education, medical meeting participation and dissemination of our scientific and economic publications related to *Oncotype DX*.

### ***General and Administrative Expenses***

Our general and administrative expenses consist primarily of personnel related costs, legal costs, including intellectual property, accounting costs and other professional and administrative costs.

### **Critical Accounting Policies and Significant Judgments and Estimates**

This discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as revenues and expenses during the reporting periods. We evaluate our estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results could therefore differ materially from those estimates under different assumptions or conditions.

We believe the following critical accounting policies reflect our more significant estimates and assumptions used in the preparation of our financial statements.

#### ***Revenue Recognition***

Product revenues for our first product, *Oncotype DX*, from the commercial launch in January 2004 through December 31, 2006, have largely been recognized on a cash basis because we have limited collection experience and a limited number of contracts. Beginning in the fourth quarter of 2005 and continuing through 2006, we recognized some product revenue from private payors on an accrual basis. For the year ended December 31, 2006, a portion of Medicare related product revenue was recognized on an accrual basis.

Our product revenues for tests performed are recognized when the following criteria of revenue recognition are met: (1) persuasive evidence that an arrangement exists; (2) delivery has occurred or services rendered; (3) the fee is fixed or determinable; and (4) collectibility is reasonably assured. Criterion (2) is satisfied we perform the test and generate and deliver a report to the physician. Determination of criteria (3) and (4) is based on management's judgments regarding the nature of the fee charged for products or services delivered and the collectibility of those fees. Product revenues where all criteria set forth above are not met are recognized on a cash basis when cash is received.

We generally bill third-party payors for *Oncotype DX* upon generation and delivery of a Recurrence Score report to the physician. As such, we take assignment of benefits and the risk of collection with the third-party payor.

We usually bill the patient directly for amounts owed after multiple requests for payment have been denied or only partially paid by the insurance carrier. As a relatively new test, *Oncotype DX* may be considered investigational by payors and not covered under their reimbursement policies. Consequently, we pursue case-by-case reimbursement where policies are not in place or payment history has not been established.

In 2006 we began accruing an allowance for bad debt against our accounts receivable consistent with historical payment experience. Bad debt expense is included in general and administrative expense on our consolidated statements of operations. As of December 31, 2006, our allowance for bad debt was \$510,000. No write-offs for bad debt were recorded against the allowance during the year ended December 31, 2006. Bad debt expense was \$510,000 for the year ended December 31, 2006. No bad debt expense was recorded for the years ended December 31, 2005 and 2004 because the vast majority revenue was recorded on a cash basis. Accounts receivable over 90 days will be written off when the appeals process is exhausted, when an unfavorable coverage decision is received, or when there is other substantive evidence that the account will not be paid.

Contract revenues are derived from studies conducted with biopharmaceutical and pharmaceutical companies and are recognized on a contract specific basis. Under certain contracts, our input, measured in terms of full-time equivalent level of effort or running a set of assays through our laboratory under a contractual protocol, triggers payment obligations and revenues are recognized as costs are incurred or assays are processed. Certain contracts have payment obligations that are triggered as milestones are complete, such as completion of a successful set of experiments. In these cases, revenues are recognized when the milestones are achieved.

### ***Stock-based Compensation Expense***

Through December 31, 2005, we accounted for stock-based payment transactions under Accounting Principles Board Opinion No. 25, or APB 25. On January 1, 2006, we adopted Statement of Financial Accounting Standards No. 123 (Revised 2004), *Share-Based Payment*, or SFAS 123R. SFAS 123R, which addresses the accounting for stock-based payment transactions whereby an entity receives employee services in exchange for equity instruments, including stock options. SFAS 123R eliminates the ability to account for stock-based compensation transactions using the intrinsic value method under APB 25, and instead requires that such transactions be accounted for using a fair-value based method. SFAS 123R is a complex accounting standard, the application of which requires significant judgment and the use of estimates, particularly surrounding assumptions used in determining fair value. We use the Black-Scholes valuation method, which requires the use of estimates such as stock price volatility and expected options lives, as well as expected option forfeiture rates, to value equity-based compensation. There is little historical evidence or guidance available with respect to developing these assumptions and models. Expected volatility is based on comparable peer data as well as historical volatility of our stock. The expected life of options granted is estimated based on historical option exercise and employee termination experience and peer group data.

We have elected the modified prospective transition method as permitted under SFAS 123R and, accordingly, prior periods have not been restated to reflect the impact of SFAS 123R. The modified prospective transition method requires that stock-based compensation expense be recorded for all new and unvested stock options that are ultimately expected to vest as the requisite service is rendered beginning on January 1, 2006. Stock-based compensation expense resulting from the adoption of SFAS 123R represents expense related to stock options granted during the year ended December 31, 2006, as well as stock options granted prior to, but not yet vested as of January 1, 2006. As of December 31, 2006, total compensation expense related to non-vested stock options not yet recognized was \$14.3 million, which is expected to be recognized over a period of 39 months.

Equity instruments granted to non-employees are valued using the Black-Scholes method and accounted for as prescribed by SFAS 123R and Emerging Issues Task Force, or EITF, Consensus No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*, and will be subject to periodic revaluation over their vesting terms.

### ***Clinical Collaborator Costs***

We enter into collaboration and clinical trial agreements with clinical collaborators and record these costs as research and development expenses. We record accruals for estimated study costs comprised of work performed by our collaborators under contract terms.

In addition to costs for research and development, under one of our collaboration agreements, we make annual payments resulting from the commercial launch of *Oncotype DX*. These payments are recorded in cost of product revenues as a license payment. Expense is recorded ratably over the year before the relevant payment is made. However, either party may terminate the agreement upon 30 days' prior written notice. If this collaborative agreement were not cancelable, a liability for the entire stream of remaining payments of \$2.2 million would be recorded and expense would be recognized ratably through 2011.

## Results of Operations

### *Years Ended December 31, 2006 and 2005*

*Revenues.* Total revenues were \$29.2 million for the year ended December 31, 2006 compared to \$5.2 million for the year ended December 31, 2005. Product revenues from *Oncotype DX* were \$27.0 million for the year ended December 31, 2006 compared to \$4.8 million for the comparable period in 2005. Approximately 40% of product revenue for the year ended December 31, 2006 was recorded on an accrual basis compared to 7% for the comparable period in 2005. The balance of product revenue was recognized upon cash collection. Product revenue from Medicare was \$12.7 million, representing 47% of total product revenue for the year ended December 31, 2006; we had no product revenue from Medicare in 2005. This increase was a result of the February 27, 2006 effective coverage date for Medicare patients and the receipt of payments for tests provided to Medicare patients prior to the effective coverage date.

Contract revenues were \$2.2 million for the year ended December 31, 2006 compared to \$379,000 for the comparable period in 2005. Contract revenues represented studies assessing our gene expression technology or collaborative work in gene selection and protocol design with our pharmaceutical partners. The increase in contract revenues reflected the initiation of the collaboration with Aventis, Inc., and the Eastern Cooperative Oncology Group as well as ongoing work with Bristol-Myers Squibb and ImClone Systems.

*Cost of Product Revenues.* For the year ended December 31, 2006, cost of product revenues was \$9.9 million for *Oncotype DX*, consisting of tissue sample processing costs of \$7.7 million and license fees of \$2.2 million. For the year ended December 31, 2005, cost of product revenues was \$6.2 million, consisting of tissue sample processing costs of \$5.5 million and license fees of \$786,000. Test volume for the year ended December 31, 2006 more than doubled over the prior year, resulting in a decrease in the cost per test delivered. During the years ended December 31, 2006 and 2005, we recorded tissue sample processing costs for *Oncotype DX* that included direct material costs, direct labor costs, equipment costs, shipping costs and other infrastructure costs. All costs recorded for tissue sample processing in those periods represent the cost of all the tests processed regardless of whether revenue was recognized with respect to that test. License fees were recorded in cost of product revenues for contractual obligations and royalties due on product revenues.

*Research and Development Expenses.* Research and development expenses increased to \$12.8 million for the year ended December 31, 2006 from \$9.5 million for the comparable period in 2005. The increase in research and development expenses was primarily due to a \$1.7 million increase in personnel and related costs, a \$1.2 million increase in collaboration expense and a \$595,000 increase in infrastructure-related expense. We expect that our research and development expenses will increase as our investment in developing tests for cancers, including cancers other than breast cancer, continues.

*Selling and Marketing Expenses.* Selling and marketing expenses increased to \$24.6 million for the year ended December 31, 2006 from \$15.3 million for the comparable period in 2005. The \$9.3 million increase in selling and marketing expenses was primarily due a \$4.9 million increase in personnel related costs, mostly to expand our domestic field sales organization, a \$2.7 million increase in promotional field and marketing expense, \$900,000 in higher travel-related expenses associated with field personnel and a \$698,000 increase in infrastructure-related expense. We expanded our domestic field sales force to support *Oncotype DX* in the second half of 2006 and we expect that selling and marketing expenses will continue to increase in future periods as we continue to expand our sales force and conduct additional physician and patient education.

*General and Administrative Expenses.* General and administrative expenses increased to \$12.8 million for the year ended December 31, 2006 from \$6.5 million for the comparable period in 2005. The \$6.3 million increase

in general and administrative expenses included a \$2.6 million increase in personnel costs, \$1.2 million in higher billing and collection fees paid to third-party billing and collection vendors, an increase of \$1.1 million in legal and accounting fees, an increase of \$510,000 in expense to establish a bad debt reserve against accounts receivable, an increase of \$335,000 in insurance related costs and an increase of \$292,000 in costs for third-party service providers related to being a public company, including investor relations. We expect general and administrative expenses to continue to increase as we spend more on fees for billing and collections due to revenue growth and continue to incur costs associated with regulatory matters and other expenses associated with the growth of our business.

*Interest Income.* Interest income was \$2.5 million for the year ended December 31, 2006 compared to \$1.2 million for the comparable period in 2005, reflecting higher average cash balances and higher market yields.

*Interest Expense.* Interest expense was \$446,000 for the year ended December 31, 2006 compared to \$258,000 for the comparable period in 2005, reflecting interest expense incurred on our equipment financing line established at the end of March 2005 under which draws have been made and interest expense has been incurred.

#### ***Years Ended December 31, 2005 and 2004***

*Revenues.* Product revenues were \$5.2 million for the year ended December 31, 2005, as compared to \$327,000 for the year ended December 31, 2004. Product revenues for the year ended December 31, 2005 were \$4.8 million, as compared to \$227,000 in the comparable period in 2004. Product revenues were primarily recognized upon cash receipt. A portion of product revenue was recorded on an accrual basis for the first time in the fourth quarter of 2005.

Contract revenues were \$379,000 for the year ended December 31, 2005, up from \$100,000 in the comparable period in 2004. Contract revenues were for studies assessing our gene expression technology and initial collaborative work in gene selection with our pharmaceutical partners.

*Cost of Product Revenues.* For the year ended December 31, 2005, cost of product revenues was \$6.2 million for Oncotype DX, consisting of tissue sample processing costs of \$5.5 million and license fees of \$786,000. For the year ended December 31, 2004, cost of product revenues was \$1.8 million, consisting of tissue sample processing costs of \$1.3 million and license fees of \$477,000. During the years ended December 31, 2005 and 2004, we recorded costs for Oncotype DX that included direct material costs, direct labor costs, equipment costs and other infrastructure costs. All costs recorded for tissue sample processing in those years represent the cost of all the tests processed regardless of whether revenue was recognized with respect to that test. License fees were recorded in cost of product revenues for contractual obligations and royalties due on product revenues.

*Research and Development Expenses.* Research and development expenses decreased to \$9.5 million for the year ended December 31, 2005, from \$10.0 million for the comparable period in 2004. The decrease in research and development expenses was primarily due to \$1.5 million in decreased costs for clinical development programs studying distant survival and chemotherapy benefits in early stage breast cancer patients and decreased license fees of \$645,000 partially offset by increased personnel costs of \$1.4 million and an increase of \$217,000 in facilities, depreciation and other general expenses.

*Selling and Marketing Expenses.* Selling and marketing expenses increased to \$15.3 million for the year ended December 31, 2005, from \$9.9 million for the comparable period in 2004. The \$5.4 million increase primarily reflected an increase of \$3.1 million in personnel related costs, mostly to establish a domestic field sales organization, and \$985,000 in higher travel expenses associated with field sales personnel, an increase of \$903,000 in field promotional and marketing expenses and an increase of \$458,000 in facilities, depreciation and other general expenses.

*General and Administrative Expenses.* General and administrative expenses increased to \$6.5 million for the year ended December 31, 2005 from \$3.9 million for the comparable period in 2004. The increase in general and administrative expenses reflected an increase of \$1.2 million in personnel costs, stock-based compensation and consulting costs, an increase of \$626,000 in billing and collections fees paid to third-party billing and collection vendors and a \$178,000 increase in insurance-related costs. These higher costs were offset in part by a \$383,000 decrease in costs related to infrastructure support.

*Interest Income and Other Income/Expense.* Interest income was \$1.2 million for the year ended December 31, 2005, compared with \$295,000 in the comparable period in 2004. This \$946,000 increase was due to higher average cash balances from our December 2004 preferred stock financing, our September 2005 public offering and higher interest rates during the year ended December 31, 2005. Other expense was \$1,000 for the year ended December 31, 2005, compared with \$20,000 for the comparable period in 2004.

*Interest Expense.* Interest expense was comprised of the interest on deferral of contractual payments under a collaboration agreement and interest indebtedness. Interest expense increased to \$258,000 for the year ended December 31, 2005, from \$4,000 in the comparable period in 2004. The increase resulted from the initiation of an equipment financing line established in March 2005 under which draws have been made and interest expense has been incurred. No such arrangement existed in the prior year.

## **Liquidity and Capital Resources**

Since our inception in August 2000, we have incurred significant losses and, as of December 31, 2006, we had an accumulated deficit of approximately \$125.1 million. We have not yet achieved profitability and anticipate that we will continue to incur net losses for at least the next two years. We expect that our research and development, selling and marketing and general and administrative expenses will continue to grow and, as a result, we will need to generate significant product revenues to achieve profitability. We may never achieve profitability.

### ***Sources of Liquidity***

Since our inception through December 31, 2006, we have received net proceeds of \$103.2 million from the sale of preferred stock and \$575,000 from the issuance of common stock to employees, consultants and directors in connection with the exercise of stock options. In October 2005, we completed an initial public offering and a concurrent private placement of our common stock, resulting in net proceeds of \$58.5 million. Purchases of equipment and leasehold improvements have been partially financed through loans. At December 31, 2006, we had cash, cash equivalents and short-term investments of \$44.2 million and debt under our equipment loan of \$7.3 million. At December 31, 2005, we had cash, cash equivalents and short-term investments of \$69.5 million and debt under our equipment loan of \$3.7 million.

### ***Cash Flows***

As of December 31, 2006, we had \$44.2 million in cash, cash equivalents and short-term investments, compared to \$69.5 million at December 31, 2005. This decrease of \$25.3 million was due primarily to cash used in operating activities of \$20.8 million and purchases of property, equipment and leasehold improvements of \$8.4 million, partially offset by net proceeds from our equipment loans of \$3.6 million.

Net cash used in operating activities was \$20.8 million for the year ended December 31, 2006, compared to \$27.6 million for the year ended December 31, 2005. The decrease in cash used in operating activities of \$6.8 million was primarily due to a decrease in net loss, excluding non-cash adjustments, of \$5.4 million, a decrease in prepaid expenses and other assets of \$599,000 and an increase in accounts payable and accrued liabilities of \$584,000. The decrease in net loss resulted from a \$22.2 million increase in revenues for *Oncotype DX*, a \$1.8 million increase in revenue from pharmaceutical collaborators, and a \$1.2 million increase in interest income, partially offset by a \$22.6 million increase in operating expenses.

Net cash provided by investing activities was \$13.1 million for the year ended December 31, 2006, compared to net cash used in investing activities of \$54.2 million for the year ended December 31, 2005. This increase of \$67.3 million was due to a decrease of \$72.1 million in short-term investments offset by a \$5.4 million increase in cash used to acquire property, equipment and leasehold improvements.

Net cash provided by financing activities during the year ended December 31, 2006 was \$3.8 million, compared to \$62.4 million for the year ended December 31, 2005. Amounts for 2006 represented \$3.6 million of net proceeds from our equipment loan and \$179,000 of net proceeds from issuance of common stock related to stock option exercises. Amounts in the year ended December 31, 2005 included net proceeds from our initial public



offering of \$53.5 million, proceeds from our private placement with Incyte of \$5.0 million and net proceeds from our equipment loan of \$3.7 million.

### ***Off-Balance Sheet Activities***

As of December 31, 2006, we have not engaged in any off-balance sheet activities.

### ***Contractual Obligations***

As of December 31, 2006, we had the following contractual commitments:

<u>Contractual Obligations</u>	<u>Payments Due by Period</u>				
	<u>Total</u>	<u>Less Than 1 Year</u>	<u>1-3 Years</u>	<u>3-5 Years</u>	<u>More Than 5 Years</u>
			(In thousands)		
Notes payable obligations	\$8,468	\$3,223	\$5,007	\$238	\$-
Operating lease obligations	4,026	730	1,531	1,626	139
<b>Total</b>	<b>\$12,494</b>	<b>\$3,953</b>	<b>\$6,538</b>	<b>\$1,864</b>	<b>\$139</b>

In March 2005, we entered into an arrangement to finance the acquisition of laboratory equipment, computer hardware and software, leasehold improvements and office equipment. In connection with this arrangement, we granted the lender a security interest in the assets purchased with the borrowed amounts. We could not prepay any amounts owed until April 2006, at which point we could prepay all, but not part, of the amounts owing under the arrangement so long as we also pay a 6% premium on the remaining payments. This premium is reduced to 5% in 2007 and 4% in 2008. As of December 31, 2006, borrowings under this arrangement were \$7.3 million at an annual interest rate of 10.23%, 10.30%, 10.49%, 10.56%, 10.65%, 11.01%, 11.18% or 11.30%, depending upon the applicable note.

As December 31, 2006, we leased approximately 48,000 square feet of laboratory and office space under a lease we entered into in September 2005. The lease has a term of six years. As of December 31, 2006, we are required to make aggregate rent payments of \$730,000 in 2007, \$753,000 in 2008, \$778,000 in 2009, \$799,000 in 2010 and \$966,000 in 2011 and thereafter, all of which are included in the table above.

In January 2007, we executed an agreement to lease approximately 48,000 square feet of additional laboratory and office space near the location we currently occupy. The lease has a term of six years. Under the new lease, we are required to make aggregate rent payments of \$375,000 in 2007, \$595,000 in 2008, \$741,000 in 2009, \$835,000 in 2010 and \$1.0 million in 2011 and thereafter, which are not included in the table above.

In addition to the above, we are required to make a series of annual payments under one of our collaboration agreements beginning on the date that we commercially launched *Oncotype DX*. The initial payment of \$150,000 was made in January 2004. For a period of seven years on each anniversary of this first payment, we are required to make additional payments in increasing amounts. Payments of \$150,000 and \$300,000 were made in January 2005 and January 2006, respectively. We are required to make additional payments of \$300,000 in 2007 and \$475,000 in each of 2008 through 2011. However, either party may terminate the agreement upon 30 days' prior written notice.

### ***Operating Capital and Capital Expenditure Requirements***

We expect to continue to incur substantial operating losses in the future and to make capital expenditures to keep pace with the expansion of our research and development programs and to scale up our commercial operations. It may take several years to move any one of a number of product candidates in early development through the development phase and validation phase to commercialization. We expect that our cash and cash equivalents will be used to fund working capital and for capital expenditures and other general corporate purposes, such as licensing technology rights, partnering arrangements for our tests outside the United States or reduction of debt obligations. We have spent approximately \$6.8 million through December 31, 2006 for facility expansion and improvements and are considering an additional approximately \$1.0 million in further facility improvements.



The amount and timing of actual expenditures may vary significantly depending upon a number of factors, such as the progress of our product development, regulatory requirements, commercialization efforts, the amount of cash used by operations and progress in reimbursement. We expect that we will receive limited payments for *OncoType DX* billings in the foreseeable future. As reimbursement contracts with third-party payors are put into place, we expect an increase in the number and level of payments received for *OncoType DX* billings.

We currently anticipate that our cash, cash equivalents and short-term investments, together with collections from *OncoType DX* and amounts available under our equipment credit facility, will be sufficient to fund our operations and facility expansion plans for at least the next 12 months. We cannot be certain that any of our reimbursement contract programs or development of future products will be successful or that we will be able to raise sufficient additional funds to see these programs through to a successful result.

Our future funding requirements will depend on many factors, including the following:

- the rate of progress in establishing reimbursement arrangements with third-party payors;
- the cost of expanding our commercial and laboratory operations, including our selling and marketing efforts;
- the rate of progress and cost of research and development activities associated with expansion of *OncoType DX* for breast cancer;
- the rate of progress and cost of research and development activities associated with products in the research phase focused on cancers other than breast cancer;
- the cost of acquiring or achieving access to tissue samples and technologies;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the effect of competing technological and market developments;
- the cost and delays in product development as a result of any changes in regulatory oversight applicable to our products; and
- the economic and other terms and timing of any collaborations, licensing or other arrangements into which we may enter.

We may also use cash to acquire or invest in complementary businesses, technologies, services or products. Until we can generate a sufficient amount of product revenues to finance our cash requirements, which we may never do, we expect to finance future cash needs primarily through public or private equity offerings, debt financings, borrowings or strategic collaborations. The issuance of equity securities may result in dilution to stockholders, and debt financing may involve restrictive covenants. We do not know whether additional funding will be available on acceptable terms, or at all. If we are not able to secure additional funding when needed, we may have to delay, reduce the scope of or eliminate one or more research and development programs or selling and marketing initiatives. In addition, we may have to work with a partner on one or more of our product development programs or market development programs, which would lower the economic value of those programs to our company.

### **Recent Accounting Pronouncements**

In September 2006, the Financial Accounting Standards Board, or FASB, issued Statement of Financial Accounting Standards No. 157, *Fair Value Measurements*, or SFAS 157. This pronouncement defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. This Statement is effective for fiscal years beginning after November 15, 2007. We are currently evaluating the effect that the adoption of SFAS 157 will have on our financial condition, results of operations and cash flows.

In July 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN 48. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS 109, *Accounting for Income Taxes*. FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 is effective for fiscal years beginning after December 15, 2006. We plan to adopt FIN 48 as of January 1, 2007 and are currently evaluating the effect that the adoption of FIN 48 will have on our financial condition, results of operations and cash flows.

**ITEM 7A. *Quantitative and Qualitative Disclosures About Market Risk.***

We are exposed to interest rate risk primarily through our investment portfolio. Our marketable securities consist of high-quality debt securities with maturities beyond 90 days at the date of acquisition, which mature within one year or less. Our long-term investments consist of high-quality debt securities with maturities beyond one year. As of December 31, 2006, we had cash, cash equivalents and short-term investments totaling \$44.2 million. Our investment policy calls for investments in short term, low risk, investment-grade instruments. Based on our portfolio content and our ability to hold investments to maturity, we believe that, if market interest rates were to increase immediately and uniformly by 10% from levels at December 31, 2006, the decline in fair value would not be material.

ITEM 8. *Financial Statements and Supplementary Data.*

Genomic Health, Inc.

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders  
Genomic Health, Inc.

We have audited the accompanying consolidated balance sheets of Genomic Health, Inc. as of December 31, 2006 and 2005, and the related consolidated statements of operations, convertible preferred stock and stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2006. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Genomic Health, Inc. at December 31, 2006 and 2005, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2006, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 9 to the consolidated financial statements, under the heading Stock-Based Compensation, the Company adopted Statement of Financial Accounting Standards No. 123(R), "Share-Based Payment", effective January 1, 2006.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Genomic Health, Inc.'s internal control over financial reporting as of December 31, 2006, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 14, 2007 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Palo Alto, California  
March 14, 2007

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders  
Genomic Health, Inc.

We have audited management's assessment, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting, that Genomic Health, Inc. maintained effective internal control over financial reporting as of December 31, 2006, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Genomic Health, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of Genomic Health Inc.'s internal control over financial reporting based on our audit.

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

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

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

In our opinion, management's assessment that Genomic Health, Inc. maintained effective internal control over financial reporting as of December 31, 2006, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Genomic Health, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2006, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Genomic Health, Inc. as of December 31, 2006 and 2005, and the related consolidated statements of operations, convertible preferred stock and stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2006 and our report dated March 14, 2007 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Palo Alto, California  
March 14, 2007

## GENOMIC HEALTH, INC.

## Consolidated Balance Sheets

	December 31,	
	2006	2005
(In thousands, except share and per share amounts)		
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$14,926	\$18,839
Short-term investments	29,289	50,688
Accounts receivable (net of allowance for bad debt; 2006-\$510, 2005-\$0)	1,862	314
Prepaid expenses and other current assets	1,609	1,584
Employee note receivable	-	37
Total current assets	47,686	71,462
Property and equipment, net	9,421	3,597
Restricted cash	500	500
Other assets	417	240
Total assets	<u>\$58,024</u>	<u>\$75,799</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$2,523	\$1,393
Accrued compensation	1,868	955
Accrued expenses and other current liabilities	1,474	1,364
Accrued license fees	907	585
Notes payable – current portion	2,547	1,052
Deferred revenues – current portion	710	238
Lease incentive obligations – current portion	122	74
Total current liabilities	10,151	5,661
Notes payable – long-term portion	4,726	2,621
Deferred revenues – long-term portion	137	-
Lease incentive obligations – long-term portion	761	-
Other liabilities	420	-
Stockholders' equity:		
Preferred stock, \$0.0001 par value, 5,000,000 and none authorized, no shares issued and outstanding at December 31, 2006 and 2005	-	-
Common stock, \$0.0001 par value; 100,000,000 shares authorized, 24,548,060 and 24,470,981 shares issued and outstanding at December 31, 2006 and 2005, respectively	2	2
Additional paid-in capital	166,922	167,053
Deferred stock-based compensation	-	(3,297 )
Accumulated other comprehensive income (loss)	8	(58 )
Accumulated deficit	(125,103)	(96,183 )
Total stockholders' equity	41,829	67,517
Total liabilities and stockholders' equity	<u>\$58,024</u>	<u>\$75,799</u>

See accompanying notes.



**GENOMIC HEALTH, INC.**  
**Consolidated Statements of Operations**

	Year Ended December 31,		
	2006	2005	2004
	(In thousands, except share and per share amounts)		
Revenues:			
Product revenues	\$27,006	\$4,823	\$227
Contract revenues	2,168	379	100
Total revenues	29,174	5,202	327
Operating expenses:			
Cost of product revenues	9,908	6,249	1,828
Research and development	12,841	9,465	10,040
Selling and marketing	24,625	15,348	9,856
General and administrative	12,765	6,485	3,869
Total operating expenses	60,139	37,547	25,593
Loss from operations	(30,965 )	(32,345 )	(25,266 )
Interest income	2,480	1,241	295
Interest expense	(446 )	(258 )	(4 )
Other income (expense), net	11	1	(20 )
Net loss	\$(28,920 )	\$(31,361 )	\$(24,995 )
Basic and diluted net loss per share	\$(1.18 )	\$(4.15 )	\$(13.82 )
Shares used in computing basic and diluted net loss per share	24,508,845	7,557,106	1,808,022

See accompanying notes.

**GENOMIC HEALTH, INC.**
**Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit)**

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Deferred Stock-based Compensation	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount					
	(In thousands, except share and per share amounts)								
Balance at December 31, 2003	29,936,839	\$51,064	1,741,684	\$ -	\$ 280	\$ -	\$ -	\$ (39,827 )	\$ (39,547 )
Issuance of common stock to employees upon exercise of stock options at \$0.66 to \$1.38 per share for cash	-	-	222,531	-	143	-	-	-	143
Issuance of common stock to consultants upon exercise of stock options at \$0.66 to \$1.38 per share for cash	-	-	1,169	-	1	-	-	-	1
Repurchase of common stock issued to founders	-	-	(14,223 )	-	-	-	-	-	-
Issuance of Series E convertible preferred stock at \$2.82 per share for cash (net of issuance costs of \$146)	18,543,980	52,148	-	-	-	-	-	-	-
Deferred stock compensation	-	-	-	-	3,647	(3,647 )	-	-	-
Amortization of deferred stock compensation	-	-	-	-	-	191	-	-	191
Stock-based compensation related to consultant options	-	-	-	-	53	-	-	-	53
Net loss and comprehensive loss	-	-	-	-	-	-	-	(24,995 )	(24,995 )
Balance at December 31, 2004	48,480,819	103,212	1,951,161	-	4,124	(3,456 )	-	(64,822 )	(64,154 )
Issuance of common stock to employees upon exercise of stock options at \$0.58 to \$2.88 per share for cash	-	-	266,916	-	245	-	-	-	245
Issuance of common stock to consultants upon exercise of stock options at \$0.66 to \$2.88 per share for cash	-	-	5,197	-	7	-	-	-	7
Issuance of common stock at \$12.00 per share, net of issuance costs	-	-	5,016,722	-	53,458	-	-	-	53,458
Issuance of common stock to Incyte at \$12.00 per share	-	-	416,666	-	5,000	-	-	-	5,000
Conversion of preferred stock into common stock	(48,480,819)	(103,212)	16,814,319	2	103,210	-	-	-	103,212
Stock-based compensation related to consultant options	-	-	-	-	92	-	-	-	92
Deferred stock compensation	-	-	-	-	917	(917 )	-	-	-
Amortization of deferred stock compensation	-	-	-	-	-	1,076	-	-	1,076
Comprehensive loss:									
Net loss	-	-	-	-	-	-	-	(31,361 )	(31,361 )
Change in unrealized loss on investments	-	-	-	-	-	-	(58 )	-	(58 )
Comprehensive loss	-	-	-	-	-	-	-	-	(31,419 )
Balance at December 31, 2005	-	-	24,470,981	2	167,053	\$ (3,297 )	(58 )	(96,183 )	67,517
Deferred compensation reclassified upon adoption of SFAS 123R on January 1, 2006	-	-	-	-	(3,297 )	3,297	-	-	-
Issuance of common stock to employees upon exercise of stock options at \$0.63 to \$9.39 per share for cash	-	-	74,826	-	173	-	-	-	173
Issuance of common stock to consultants upon exercise of stock options at \$2.88 per share for cash	-	-	2,253	-	6	-	-	-	6
Stock-based compensation related to employee stock options	-	-	-	-	2,904	-	-	-	2,904
Stock-based compensation related to consultant stock options	-	-	-	-	83	-	-	-	83
Comprehensive loss:									
Net loss	-	-	-	-	-	-	-	(28,920 )	(28,920 )
Change in unrealized loss on investments	-	-	-	-	-	-	66	-	66
Comprehensive loss	-	-	-	-	-	-	-	-	(28,854 )
Balance at December 31, 2006	-	\$-	24,548,060	\$ 2	\$ 166,922	\$ -	\$ 8	\$ (125,103 )	\$ 41,829

See accompanying notes.

**GENOMIC HEALTH, INC.**  
**Consolidated Statements of Cash Flows**

	December 31,		
	2006	2005	2004
	(In thousands)		
<b>Operating activities</b>			
Net loss	\$(28,920)	\$(31,361 )	\$(24,995)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	2,579	1,522	1,008
Employee stock-based compensation	2,904	1,076	191
Non-employee stock-based compensation	83	92	53
Gain or loss on disposal of property and equipment	3	(31 )	20
Changes in assets and liabilities:			
Accounts receivable	(1,548 )	(314 )	-
Employee note receivable	37	76	(113 )
Prepaid expenses and other current assets	(25 )	(683 )	(338 )
Other assets	216	(107 )	-
Accounts payable	1,130	292	274
Accrued expenses and other liabilities	432	1,247	527
Accrued compensation	913	352	261
Deferred revenues	609	238	-
Lease incentive obligations	809	-	-
Net cash used in operating activities	<u>(20,778)</u>	<u>(27,601 )</u>	<u>(23,112)</u>
<b>Investing activities</b>			
Purchase of property and equipment	(8,379 )	(2,972 )	(1,856 )
Purchase of short-term investments	(40,068)	(50,688)	-
Maturities of short-term investments	61,467	-	-
Unrealized gains (losses) on investment securities	66	(58 )	-
Restricted cash	-	(500 )	50
Net cash provided by (used in) investing activities	<u>13,086</u>	<u>(54,218)</u>	<u>(1,806 )</u>
<b>Financing activities</b>			
Proceeds from notes payable	4,912	4,090	-
Principal payments of notes payable	(1,312 )	(417 )	-
Net proceeds from issuance of common stock	179	58,710	144
Net proceeds from issuance of convertible preferred stock	-	-	52,148
Repayment of long-term debt due to related party	-	-	(161 )
Net cash provided by financing activities	<u>3,779</u>	<u>62,383</u>	<u>52,131</u>
Net increase (decrease) in cash and cash equivalents	(3,913 )	(19,436)	27,213
Cash and cash equivalents at the beginning of period	18,839	38,275	11,062
Cash and cash equivalents at the end of period	<u>\$14,926</u>	<u>\$18,839</u>	<u>\$38,275</u>
<b>Supplemental disclosure of cash flow information</b>			
Cash paid for interest	\$446	\$258	\$4
Non-cash transactions:			
Preferred stock converted to common upon initial public offering	-	103,212	-

See accompanying notes.

**GENOMIC HEALTH, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**December 31, 2006**

**Note 1. Organization and Summary of Significant Accounting Policies**

***The Company***

Genomic Health, Inc., or the Company, was incorporated in Delaware in August 2000. The Company was organized to deliver individualized genomic information to patients and their physicians to improve the quality of treatment decisions for patients with cancer. The Company's first test, *Oncotype DX*, was launched in 2004 and is used for early stage breast cancer patients to predict the likelihood of cancer recurrence, the likelihood of patient survival within 10 years of diagnosis and the likelihood of chemotherapy benefit. The Company has incurred significant losses and expects to incur additional losses for at least the next two years as commercial and development efforts continue.

***Initial Public Offering***

On October 4, 2005, the Company closed an initial public offering of 5,016,722 shares of its common stock at \$12.00 per share. Net proceeds from the offering after deducting underwriting discounts, commissions and expenses were \$53.5 million. On the closing of the Company's initial public offering, all of the convertible preferred stock outstanding automatically converted into 16,160,273 shares of common stock.

An additional \$5.0 million was raised on October 4, 2005, through the private sale of 416,666 shares common stock to Incyte Corporation, a related party. As of December 31, 2006, to the Company's knowledge, Incyte Corporation had divested its holdings in the Company's common stock. See Note 10 to the Company's consolidated financial statements for further information on related parties.

***Principles of Consolidation***

The consolidated financial statements include all the accounts of the Company and all wholly owned subsidiaries. The Company has one wholly-owned subsidiary, *Oncotype Laboratories, Inc.*, which was established in 2003 and is inactive.

***Basis of Presentation and Use of Estimates***

The accompanying consolidated financial statements as of December 31, 2006 and 2005 and for the years ended December 31, 2006, 2005 and 2004 have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of financial statements in conformity with generally accepted accounting principles requires management to make judgments, assumptions and estimates that affect the amounts reported in the Company's consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates.

***Cash Equivalents and Short-term Investments***

The Company considers all highly liquid investments with maturities of three months or less when purchased to be cash equivalents. The Company invests in money market securities through a major U.S. bank and is exposed to credit risk in the event of default by the financial institution to the extent of amounts recorded on the balance sheets.

The Company invests in short-term and long-term marketable securities, primarily corporate notes, government agencies, asset-backed securities and municipal bonds. The Company considers all investments with a maturity date less than one year as of the balance sheet date to be short-term investments. These securities are carried at estimated fair value with unrealized gains and losses included in stockholders' equity. Those investments with a maturity date greater than one year as of the balance sheet date are considered to be long-term investments. All investments are available for sale.

**GENOMIC HEALTH, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**

Realized gains and losses and declines in value, if any, judged to be other than temporary on available-for-sale securities are reported in other income or expense. When securities are sold, any associated unrealized gain or loss recorded as a separate component of stockholders' equity is reclassified out of stockholders' equity on a specific-identification basis and recorded in earnings for the period.

***Restricted Cash***

In September 2005, the Company entered into a non-cancelable facilities lease with the facility owner that has a term of six years. In connection with this lease, the Company was required to secure a letter of credit, which totaled \$500,000 and is classified as restricted cash on the balance sheet.

***Fair Value of Financial Instruments***

The carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, short-term investments, trade receivables, accounts payable, approximate fair value due to their short maturities. Based on borrowing rates currently available to the Company for loans and capital lease obligations with similar terms, the carrying value of the Company's debt obligations approximates fair value.

***Property and Equipment***

Property and equipment are stated at cost. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets, which range from three to five years. Leasehold improvements are amortized using the straight-line method over the estimated useful lives of the assets or the term of the lease, whichever is shorter.

***Leases***

The Company enters into lease agreements for its laboratory and office facilities. These leases are classified as operating leases. Rent expense is recognized on a straight-line basis over the term of the lease. Incentives granted under the Company's facilities leases, including allowances to fund leasehold improvements and rent holidays, are capitalized as deferred rent and are recognized as reductions to rental expense on a straight-line basis over the term of the lease.

***Intangible assets***

Intangible assets with definite useful lives are recorded at cost, less accumulated amortization. Amortization is recognized over their estimated useful lives.

***Impairment of Long-lived Assets***

The Company reviews long-lived assets, which include property and equipment and intangible assets, for impairment whenever events or changes in business circumstances indicate that the carrying amounts of the assets may not be fully recoverable. An impairment loss would be recognized when estimated discounted future cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount. Impairment, if any, is assessed using discounted cash flows. Through December 31, 2006, there have been no such losses.

***Research and Development***

Research and development expenses comprise the following types of costs incurred in performing research and development activities: salaries and benefits, allocated overhead and facility occupancy costs, contract services and other outside costs, and costs to acquire in-process research and development projects and technologies that have no alternative future use. Research and development expenses also include costs related to activities performed under

**GENOMIC HEALTH, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**

contracts with biopharmaceutical and pharmaceutical companies. Research and development costs are expensed as incurred.

***Concentration of Risk***

Cash, cash equivalents, short-term investments and accounts receivable are financial instruments which potentially subject the Company to concentrations of credit risk. The Company invests in debt instruments and in money market funds, and by policy, limits the amount in any one type of investment, other than securities issued or guaranteed by the U.S. Government. Through December 31, 2006, no material losses had been incurred. One major customer accounted for approximately 47% of the Company's product revenue for the year ended December 31, 2006; no revenue from this customer was recorded in 2005. This customer represented 59% of the Company's net accounts receivable balance as of December 31, 2006. Another major customer accounted for approximately 4% and 11% of the Company's revenue in 2006 and 2005, respectively. This customer represented 17% and 70% of the Company's accounts receivable balance as of December 31, 2006 and 2005, respectively.

***Comprehensive Loss***

The Company displays comprehensive loss and its components as part of the statements of stockholders' equity. Other comprehensive loss consists entirely of unrealized gains and losses on investments.

***Internal Use Software***

The Company accounts for software developed or obtained for internal use in accordance with Statement of Position 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use*. The statement requires capitalization of certain costs incurred in the development of internal-use software, including external direct material and service costs and employee payroll and payroll-related costs. Capitalized software costs, which are included in property and equipment, are depreciated over three to five years.

***Guarantees and Indemnifications***

The Company, as permitted under Delaware law and in accordance with its Bylaws, indemnifies its officers and directors for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at the Company's request in such capacity. The term of the indemnification period is for the officer's or director's lifetime. The maximum amount of potential future indemnification is unlimited; however, the Company has a director and officer insurance policy that limits its exposure and may enable it to recover a portion of any future amounts paid. The Company believes the fair value of these indemnification agreements is minimal. Accordingly, the Company has not recorded any liabilities for these agreements as of December 31, 2006 and 2005.

***Income Taxes***

The Company uses the liability method for income taxes, whereby deferred income taxes are provided on items recognized for financial reporting purposes over different periods than for income tax purposes. Valuation allowances are provided when the expected realization of tax assets does not meet a more-likely-than-not criterion.

***Stock-based Compensation***

Through December 31, 2005, the Company accounted for stock-based payment transactions under Accounting Principles Board Opinion No. 25, or APB 25. On January 1, 2006, the Company adopted Statement of Financial Accounting Standards No. 123 (Revised 2004), *Share-Based Payment*, or SFAS 123R. SFAS 123R, which addresses the accounting for stock-based payment transactions whereby an entity receives employee services in exchange for equity instruments, including stock options. SFAS 123R eliminates the ability to account for stock-based compensation transactions using the intrinsic value method under APB 25, and instead requires that such transactions be



GENOMIC HEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

accounted for using a fair-value based method. SFAS 123R is a complex accounting standard, the application of which requires significant judgment and the use of estimates, particularly surrounding assumptions used in determining fair value. The Company uses the Black-Scholes valuation method, which requires the use of estimates such as stock price volatility and expected options lives, as well as expected option forfeiture rates, to value equity-based compensation. There is little historical evidence or guidance available with respect to developing these assumptions and models. Expected volatility is based on comparable peer data as well as historical volatility of the Company's stock. The expected life of options granted is estimated based on historical option exercise and employee termination experience and peer group data.

The Company has elected the modified prospective transition method as permitted under SFAS 123R and, accordingly, prior periods have not been restated to reflect the impact of SFAS 123R. The modified prospective transition method requires that stock-based compensation expense be recorded for all new and unvested stock options that are ultimately expected to vest as the requisite service is rendered beginning on January 1, 2006. Stock-based compensation expense resulting from the adoption of SFAS 123R represents expense related to stock options granted during the year ended December 31, 2006, as well as stock options granted prior to, but not yet vested as of, January 1, 2006. As of December 31, 2006, total compensation expense related to non-vested stock options not yet recognized was \$14.3 million, which is expected to be recognized over a period of 39 months.

Equity instruments granted to non-employees are valued using the Black-Scholes method and accounted for as prescribed by SFAS 123R and Emerging Issues Task Force, or EITF, Consensus No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*, and will be subject to periodic revaluation over their vesting terms.

**Revenue Recognition**

The Company derives its revenues from product sales and contract research arrangements. The Company operates in one industry segment. Product revenues are derived solely from the sale of the *Oncotype DX* test. Third-party payors are billed upon generation and delivery of a Recurrence Score report to the physician.

The Company's product revenues for tests performed are recognized when the following criteria of revenue recognition are met: (1) persuasive evidence that an arrangement exists; (2) delivery has occurred or services rendered; (3) the fee is fixed or determinable; and (4) collectibility is reasonably assured. Criterion (2) is satisfied when the Company performs the test and generates and delivers a report to the physician. Determination of criteria (3) and (4) is based on management's judgments regarding the nature of the fee charged for products or services delivered and the collectibility of those fees. Product revenues where all criteria set forth above are not met are recognized on a cash basis when cash is received.

The Company generally bills third-party payors for *Oncotype DX* upon generation and delivery of a Recurrence Score report to the physician. As such, the Company takes assignment of benefits and the risk of collection with the third-party payor. The Company usually bills the patient directly for amounts owed after multiple requests for payment have been denied or only partially paid by the insurance carrier. As a relatively new test, *Oncotype DX* may be considered investigational by payors and not covered under their reimbursement policies. Consequently, the Company pursues case-by-case reimbursement where policies are not in place or payment history has not been established. As a result, at the time of delivery of the Recurrence Score to the physician, and in the absence of a reimbursement contract or sufficient payment history, collectibility cannot reasonably be assured and revenues are therefore only recognized at the time cash is collected.

In 2006 the Company began accruing an allowance for bad debt against its accounts receivable consistent with historical payment experience. Bad debt expense is included in general and administrative expense on the Company's consolidated statements of operations. As of December 31, 2006, the Company's allowance for bad debt was \$510,000. No write-offs for bad debt were recorded against the allowance during the year ended December 31, 2006. Bad debt expense was \$510,000 for the year ended December 31, 2006. No bad debt

GENOMIC HEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

expense was recorded for the years ended December 31, 2005 and 2004 because the vast majority of revenues were recorded on a cash basis. Accounts receivable over 90 days will be written off when the appeals process is exhausted, when an unfavorable coverage decision is received, or when there is other substantive evidence that the account will not be paid.

Contract revenues are derived from studies conducted with biopharmaceutical and pharmaceutical companies and are recognized on a contract specific basis. Contract revenues are recorded on an accrual basis as the contractual obligations are completed. Under certain contracts, the Company's input, measured in terms of full-time equivalent level of effort or running a set of assays through its laboratory under a contractual protocol, triggers payment obligations and revenues are recognized as costs are incurred or assays are processed. Certain contracts have payment obligations that are triggered as milestones are complete, such as completion of a successful set of experiments. In these cases, revenues are recognized when the milestones are achieved.

***Recently Issued Accounting Pronouncements***

In September 2006, the Financial Accounting Standards Board, or FASB issued Statement of Financial Accounting Standards No. 157, *Fair Value Measurements*, or SFAS 157. This pronouncement defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. This Statement is effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the effect that the adoption of SFAS 157 will have on its financial condition, results of operations and cash flows.

In July 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN 48. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS 109, *Accounting for Income Taxes*. FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 is effective for fiscal years beginning after December 15, 2006. The Company will adopt FIN 48 as of January 1, 2007 and is currently evaluating the effect that the adoption of FIN 48 will have on its financial condition, results of operations and cash flows.

**Note 2. Net Loss Per Share**

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of common shares outstanding for the period without consideration for potential common shares. Diluted net loss per share is computed by dividing the loss by the weighted-average number of common shares outstanding for the period less the weighted-average unvested common shares subject to repurchase and dilutive potential common shares for the period determined using the treasury-stock method. For purposes of this calculation, preferred stock and options to purchase stock are considered to be potential common shares and are only included in the calculation of diluted loss per share when their effect is dilutive.

GENOMIC HEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

	Year Ended December 31,		
	2006	2005	2004
(In thousands, except share and per share data)			
<b>Historical</b>			
Numerator:			
Loss applicable to common stockholders	\$(28,920 )	\$(31,361 )	\$(24,995 )
Denominator:			
Weighted-average common shares outstanding	24,508,845	7,557,106	1,808,022
Basic and diluted loss per share	\$(1.18 )	\$(4.15 )	\$(13.82 )
<b>Historical outstanding dilutive securities not included in diluted net loss per share calculation</b>			
Preferred stock	–	–	16,160,273
Options to purchase common stock	2,940,803	2,021,276	1,423,508
	<u>2,940,803</u>	<u>2,021,276</u>	<u>17,583,781</u>

**Note 3. Collaboration and Specimen Transfer Agreements**

The Company has entered into a variety of specimen transfer and collaboration agreements relating to its development efforts. The Company recorded collaboration expenses of \$1.5 million, \$333,000 and \$1.1 million for the years ended December 31, 2006, 2005 and 2004, respectively, relating to services provided in connection with these agreements. In addition to these expenses, certain agreements contain provisions for royalties from inventions resulting from these collaborations.

At December 31, 2006, future milestone payments, exclusive of royalty payments, relating to the launch and commercialization of *Oncotype DX* total approximately \$2.2 million and are payable as follows (in thousands):

	<b>Milestone Payments</b>
January 2007	\$300
January 2008	475
January 2009	475
January 2010	475
January 2011	475
Total	<u>\$2,200</u>

If at any time the Company discontinues the sale of commercial products or services resulting from the collaboration, no future milestone payments will be payable and the Company will have no further obligation under the agreement. If the Company's cash balance is less than \$5.0 million on the due date of any the milestone payments, the Company may be able to defer any current milestone payment due for a period of up to 12 months.

In addition, the Company has secured certain options and rights relating to any joint inventions arising out of the collaborations.

**Note 4. Commercial Technology Licensing Agreements**

The Company is a party to various agreements under which it licenses technology on a nonexclusive basis in the field of human diagnostics. Access to these licenses enables the Company to process its laboratory tests for

GENOMIC HEALTH, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Oncotype DX. Payments under these agreements for the years ended December 31, 2006, 2005 and 2004 were \$2.2 million, \$786,000 and \$477,000, respectively, and were included in cost of product revenues.

**Note 5. Short-term Investments**

The following tables illustrate the Company's available-for-sale securities as of the dates indicated:

	December 31, 2006			Estimated Fair Value
	Amortized Cost	Unrealized Gains	Unrealized Losses	
(In thousands)				
Debt securities of U.S. government agencies	\$9,082	\$3	\$-	\$9,085
Corporate debt securities	20,199	5	-	20,204
Total	<u>\$29,281</u>	<u>\$8</u>	<u>\$-</u>	<u>\$29,289</u>

	December 31, 2005			Estimated Fair Value
	Amortized Cost	Unrealized Gains	Unrealized Losses	
(In thousands)				
Debt securities of U.S. government agencies	\$14,625	\$-	\$(8 )	\$14,617
Corporate debt securities	31,326	-	(43 )	31,283
Asset-backed securities	4,795	-	(7 )	4,788
Total	<u>\$50,746</u>	<u>\$-</u>	<u>\$(58 )</u>	<u>\$50,688</u>

The amortized cost and estimated fair value of available-for-sale securities by contractual maturity at December 31, 2006 was as follows:

	December 31, 2006	
	Cost	Market Value
(In thousands)		
Due in one year or less	\$29,281	\$29,289

**Note 6. Property and Equipment**

The following table summarizes the Company's property and equipment as of the dates indicated:

	December 31,	
	2006	2005
(In thousands)		
Computer equipment and software	\$1,264	\$1,137
Lab equipment	7,016	5,467
Furniture and fixtures	280	205
Leasehold improvements	7,296	343
Construction in progress	122	450
	15,978	7,602
Less accumulated depreciation and amortization	(6,557)	(4,005)
	<u>\$9,421</u>	<u>\$3,597</u>

For the years ended December 31, 2006, 2005 and 2004, the Company recorded depreciation and amortization expense of \$2.6 million, \$1.5 million and \$1.0 million, respectively.

## GENOMIC HEALTH, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

**Note 7. Commitments***Notes Payable*

In March 2005, the Company entered into an arrangement to finance the acquisition of laboratory equipment, computer hardware and software, leasehold improvements and office equipment. In connection with this arrangement, the Company granted the lender a security interest in the assets purchased with the borrowed amounts. The Company could not prepay any amounts owed until April 2006, at which point the Company could prepay all, but not part, of the amounts owing under the arrangement so long as it also pay a 6% premium on the remaining payments. This premium is reduced to 5% in 2007 and 4% in 2008. As of December 31, 2006, borrowings under this arrangement were \$7.3 million at an annual interest rate of 10.23%, 10.30%, 10.49%, 10.56%, 10.65%, 11.01%, 11.18% or 11.30%, depending on the applicable note. According to the terms of the arrangement the Company is required to notify the lender if there is a material adverse change. The Company complied with all the material covenants of the finance arrangement during the years ended December 31, 2006 and 2005.

As of December 31, 2006, the Company's aggregate commitments under its financing arrangement were as follows (in thousands):

	<b>Annual Payment Amounts</b>
Years Ending December 31,	
2007	\$3,223
2008	3,073
2009	1,934
2010	238
Total minimum payments	8,468
Less: interest portion	(1,195)
Present value of net minimum payments	7,273
Less: current portion of obligations	(2,547)
Long-term obligations	<u>\$4,726</u>

*Leases*

During 2003, the Company entered into an agreement to extend its then existing sublease through May 31, 2005, wherein monthly rent beginning October 1, 2003, was modified to be \$75,000 per month. During 2005, the Company entered into an additional agreement to extend the original four-year term of the sublease agreement through February 28, 2006, wherein monthly rent beginning June 1, 2005 was modified to \$40,000 per month. As part of this 2005 agreement, the Company agreed to sublease additional adjacent premises effective February 8, 2005 through February 28, 2006 at a rate of \$14,000 per month, with first and last monthly payments of \$10,000 and \$14,000, respectively. In September 2005, the Company entered into a non-cancelable lease directly with the facility owner for the entire 48,000 square feet of laboratory and office space that the Company currently occupies. The lease has a term of six years and included lease incentive obligations of \$960,000, which are being amortized on a straight-line basis over the life of the lease.

Rent expense under all operating leases amounted to \$810,000, \$838,000 and \$911,000 for the years ended December 31, 2006, 2005 and 2004, respectively.

## GENOMIC HEALTH, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Future non-cancelable commitments under operating leases at December 31, 2006, were as follows (in thousands):

	<u>Annual Payment Amounts</u>
Years Ending December 31,	
2007	\$730
2008	753
2009	778
2010	799
2011	827
Thereafter	139
Total minimum payments	<u>\$4,026</u>

**Note 8. Convertible Preferred Stock and Stockholders' Equity (Deficit)***Convertible Preferred Stock*

In November 2000, January 2001, March 2001, March through November 2002, and February through December 2004 the Company completed private placements for the sale of 7,935,000, 15,675,674, 2,252,252, 4,073,913 and 18,543,980 shares of Series A, B, C, D and E convertible preferred stock, respectively, resulting in gross proceeds of \$7.9 million, \$29.0 million, \$5.0 million, \$9.4 million and \$52.3 million, respectively.

On October 4, 2005, the Company completed its initial public offering of 5,016,722 shares of common stock at a price to the public of \$12.00 per share. Upon consummation of the offering, all 48,480,819 outstanding shares of preferred stock converted into 16,160,273 of shares of common stock and a dividend of 654,046 common shares was distributed to the stockholders on conversion.

**Note 9. Common Stock and Equity Plans***Common Stock*

As of December 31, 2006, the Company had 24,548,060 shares of common stock outstanding. Common stock reserved for issuance as of December 31, 2006 is as follows:

Options outstanding	2,940,803
Future option grants	3,258,436

*Dividend*

On September 8, 2005, the board of directors of the Company declared a conditional dividend of 791,210 shares of common stock, which was allocated upon the closing of the Company's initial public offering on a pro rata basis to all of the Company's stockholders and option holders of record as of September 28, 2005. The Company issued 740,030 shares to its stockholders pursuant to this dividend at the closing of the initial public offering on October 4, 2005, less an aggregate of 86 shares for which cash was paid in lieu of fractional interests, and the number of shares underlying outstanding stock options were increased by approximately 51,080 shares, less any fractional shares resulting from such adjustment. The dividend has been given retroactive effect in the accompanying consolidated financial statements.



**GENOMIC HEALTH, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**

***Reverse Stock Split***

On September 23, 2005, the Company effected a 1-for-3 reverse stock split of its common stock. All share and per share amounts have been retroactively restated in the accompanying consolidated financial statements and notes for all periods presented.

***2005 Stock Incentive Plan***

On September 8, 2005, the Board of Directors approved the 2005 Stock Incentive Plan, or 2005 Plan, that was later approved by the Company's stockholders. The Company has reserved 5,000,000 shares of the Company's common stock for issuance under the 2005 Plan. The 2005 Plan became effective upon the closing of the Company's initial public offering on October 4, 2005. Pursuant to the 2005 Plan, stock options, restricted shares, stock units, and stock appreciation rights may be granted to employees, consultants, and outside directors of the Company. Options granted may be either incentive stock options or nonstatutory stock options.

Stock options are governed by stock option agreements between the Company and recipients of stock options. Incentive stock options may be granted under the 2005 Plan at an exercise price of not less than 100% of the fair market value of the common stock on the date of grant, determined by the Compensation Committee of the Board of Directors. Nonstatutory stock options may be granted under the 2005 Plan at an exercise price of not less than 80% of the fair market value of the common stock on the date of grant, determined by the Compensation Committee of the Board of Directors. Options become exercisable and expire as determined by the Compensation Committee, provided that the term of incentive stock options may not exceed 10 years from the date of grant. Stock option agreements may provide for accelerated exercisability in the event of an optionee's death, disability, or retirement or other events.

Under the 2005 Plan, each outside director who joins the board after the effective date of the 2005 Plan will receive an automatic nonstatutory stock option grant that vests at a rate of 25% at the end of the first year, with the remaining balance vesting monthly over the next three years. On the first business day following the annual meeting of the Company's stockholders, each outside director who is continuing board service and who was not initially elected to the board at the annual meeting will receive an additional nonstatutory stock option grant, which will vest in full immediately prior to the next annual meeting of the Company's stockholders. Nonstatutory stock options granted to outside directors must have an exercise price equal to 100% of the fair market value of the common stock on the date of grant. Nonstatutory stock options terminate on the earlier of the day before the tenth anniversary of the date of grant or the date twelve months after termination of the outside director's service as a member of the board of directors.

Restricted shares, stock appreciation rights, and stock units granted under the 2005 Plan are governed by restricted stock agreements, SAR agreements, and stock unit agreements between the Company and recipients of the awards. Terms of the agreements are determined by the Compensation Committee.

***2001 Stock Incentive Plan***

The Company's 2001 Stock Incentive Plan, or 2001 Plan, was terminated upon completion of the Company's initial public offering in October 2005. No shares of common stock are available under the 2001 Plan other than to satisfy exercises of stock options granted under the 2001 Plan prior to its termination. Under the 2001 Plan, incentive stock options and nonstatutory stock options were granted to employees, officers, and directors of, or consultants to, the Company and its affiliates. Options granted under the 2001 Plan expire no later than 10 years from the date of grant.

***Adoption of SFAS 123R***

Until December 31, 2005, the Company followed APB 25 to account for employee stock options using the intrinsic value method. Under APB 25, no compensation expense is recognized when the exercise price of the

## GENOMIC HEALTH, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Company's employee stock options equals the market price of the underlying stock on the date of grant. On January 1, 2006, the Company adopted SFAS 123R, which addresses the accounting for stock-based payment transactions whereby an entity receives employee services in exchange for equity instruments, including stock options. SFAS 123R eliminates the ability to account for stock-based compensation transactions using the intrinsic value method under APB 25, and instead requires that such transactions be accounted for using a fair-value based method. The Company uses the Black-Scholes option valuation model to value stock options under SFAS 123R.

On November 10, 2005, the FASB issued FASB Staff Position No. FAS 123(R)-3, *"Transition Election Related to Accounting for Tax Effects of Share-Based Payment Awards."* The Company has elected to adopt the alternative transition method provided in the FASB Staff Position for calculating the tax effects (if any) of stock-based compensation expense pursuant to SFAS 123R. The alternative transition method includes simplified methods to establish the beginning balance of the additional paid-in capital pool, or APIC pool, related to the tax effects of employee stock-based compensation, and to determine the subsequent impact to the APIC pool and the consolidated statements of operations and cash flows of the tax effects (if any) of employee stock-based compensation awards that are outstanding upon adoption of SFAS 123R.

Employee stock-based compensation expense recognized for the year ended December 31, 2006 was calculated based on awards ultimately expected to vest and has been reduced for estimated forfeitures. SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The Company recorded employee stock-based compensation expense of \$2.9 million for the year ended December 31, 2006 as a result of the adoption of SFAS 123R. The following table presents the impact of the adoption of SFAS 123R on selected statements of operations line items for the year ended December 31, 2006:

	For the Year Ended December 31, 2006 <u>(In thousands)</u>
Cost of product revenues	\$167
Research and development	821
Selling and marketing	779
General and administrative	1,137
Total	<u>\$2,904</u>

As a result of adopting SFAS 123R on January 1, 2006, the Company's net loss for year ended December 31, 2006 was \$1.8 million higher than if it had continued to account for stock-based compensation under APB 25. Basic and diluted net loss per share for the year ended December 31, 2006 was \$0.07 higher than if the Company had continued to account for stock-based compensation under APB 25.

Stock-based compensation expense resulting from the adoption of SFAS 123R represents expense related to stock options granted during the year ended December 31, 2006, as well as stock options granted prior to, but not yet vested as of, January 1, 2006. As of December 31, 2006, total compensation expense related to non-vested stock options not yet recognized was \$14.3 million, which is expected to be allocated to expenses over a remaining vesting period of 39 months.

## GENOMIC HEALTH, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

*Pro Forma Information for Period Prior to Adoption of SFAS 123R*

The following pro forma net loss and loss per share were determined as if the Company had accounted for employee stock-based compensation for its employee stock option plans under the fair value method prescribed by SFAS 123:

	<u>Year Ended December 31,</u>	
	<u>2005</u>	<u>2004</u>
	(In thousands, except per share amounts)	
Net loss – as reported	\$(31,361)	\$(24,995)
Add: Total stock-based employee compensation expense included in net loss	1,076	191
Deduct: Total stock-based employee compensation expense determined under the fair-value based method for all awards	<u>(1,482 )</u>	<u>(320 )</u>
Net loss, pro forma	<u>\$ (31,767)</u>	<u>\$ (25,124)</u>
Net loss per share:		
Basic and diluted, pro forma	<u>\$ (4.20 )</u>	<u>\$ (13.90 )</u>

*Valuation Assumptions*

The employee stock-based compensation expense recognized under SFAS 123R and presented in the pro forma disclosure required under SFAS 123 was determined using the Black-Scholes option valuation model. Option valuation models require the input of highly subjective assumptions and these assumptions can vary over time. Expected volatility is based on comparable peer data as well as the historical volatility of the Company's stock. The expected life of options granted is estimated based on historical option exercise and employee termination experience and comparable peer data. The risk-free interest rate is estimated using rates available on U.S. Treasury securities with a remaining term approximating the expected life of the options. The Company uses a dividend yield of zero as it has never paid cash dividends and does not anticipate paying cash dividends in the foreseeable future. The weighted-average fair values and the assumptions used in calculating such values during each fiscal period are as follows:

	<u>Year Ended December 31,</u>					
	<u>2006</u>		<u>2005</u>		<u>2004</u>	
Volatility factor	68	%	77	%	80	%
Risk-free interest rate	4.76	%	4.00	%	2.80	%
Dividend yield	0	%	0	%	0	%
Expected life of options	5.5 years		4.8 years		4.0 years	
Weighted-average fair value	\$10.27		\$6.39		4.98	

*Stock Options Granted to Non-employees*

The Company grants options to consultants from time to time in exchange for services performed for the Company. During the years ended December 31, 2006, 2005 and 2004, the Company granted options to purchase

## GENOMIC HEALTH, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

2,850, 10,172 and 8,333 shares, respectively, of common stock to consultants. The fair value of these option grants was determined using the Black-Scholes option pricing model using the following assumptions:

	Year Ended December 31,					
	2006		2005		2004	
Volatility factor	70	%	75	%	80	%
Risk-free interest rate	4.80	%	4.00	%	2.40	%
Dividend yield	0	%	0	%	0	%
Expected life of options	10 years		10 years		10 years	

In general, the options vest over the contractual period of the consulting arrangement and, therefore, the Company will revalue the options periodically and record additional compensation expense related to these options over the remaining vesting period. During the years ended December 31, 2006, 2005 and 2004, compensation expense related to these options was \$83,000, \$92,000 and \$53,000, respectively.

**Stock Option Activity**

The following is a summary of option activity for the years ended December 31 2006, 2005 and 2004:

	Outstanding Options		
	Shares Available for Grant	Number of Shares	Weighted-Average Exercise Price
Balance at December 31, 2003	1,541,248	710,470	\$0.74
Options granted	(942,453 )	942,453	\$2.18
Options exercised	–	(223,700 )	\$0.64
Options cancelled	5,715	(5,715 )	\$0.96
Balance at December 31, 2004	604,510	1,423,508	\$1.71
Options authorized	5,000,000	–	
Options granted	(877,606 )	877,606	\$8.48
Options exercised	–	(272,113 )	\$0.93
2001 Plan shares expired	(443,998 )	–	
Options cancelled	7,725	(7,725 )	\$1.92
Balance at December 31, 2005	4,290,631	2,021,276	\$4.75
Options granted	(1,068,105 )	1,068,105	\$16.59
Options exercised	–	(77,079 )	\$2.36
2001 Plan shares expired	(35,589 )	–	
Options cancelled	71,499	(71,499 )	\$5.94
Balance at December 31, 2006	3,258,436	2,940,803	\$9.10

The intrinsic value of stock options exercised during 2006, 2005 and 2004 was \$948,000 \$942,000 and \$160,000 respectively. The estimated fair value of options vesting in 2006, 2005 and 2004 was \$2.7 million, \$1.6 million and \$436,000, respectively.

## GENOMIC HEALTH, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The following table summarizes information concerning outstanding and exercisable options under the 2001 and 2005 Plans as of December 31, 2006:

Exercise	Price Range	Options Outstanding			Options Exercisable	
		Number Outstanding	Weighted-Average Years Remaining Contractual Life	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
\$0.58 - \$1.33		582,609	6.61	\$1.10	403,319	\$1.01
\$2.88 - \$2.88		516,773	8.02	\$2.88	239,007	\$2.88
\$3.17 - \$3.17		69,348	2.92	\$3.17	34,674	\$3.17
\$9.39 - \$9.39		610,209	8.92	\$9.39	148,059	\$9.39
\$9.55 - \$17.24		487,409	8.85	\$12.14	35,429	\$10.51
\$18.89 - \$22.45		674,455	9.92	\$18.93	–	\$–
		<u>2,940,803</u>			<u>860,488</u>	

At December 31, 2006, the aggregate intrinsic value of the outstanding options was \$28.2 million and the aggregate intrinsic value of the exercisable options was \$13.1 million. The weighted-average remaining contractual life for exercisable options was 7.11 years.

***Deferred Stock-based Compensation***

During 2004, stock options were granted with exercise prices that were equal to the estimated fair value of the common stock on the date of grant as determined by the Board of Directors. Subsequent to the commencement of the initial public offering process, the Company reassessed the fair value of its common stock and determined that options granted from January 2004 through September 2005 were granted at exercise prices that were below the reassessed fair value of the common stock on the date of grant. Accordingly, deferred stock-based compensation of \$3.6 million was recorded during 2004 in accordance with APB 25 and presented as a separate component of stockholder's equity. In the year ended December 31, 2005, an additional \$917,000 of deferred stock-based compensation was recorded. The Company recorded stock-based compensation expense of \$1.1 million and \$191,000, for the years ended December 31, 2005 and 2004, respectively.

In accordance with the provisions of SFAS 123R, on January 1, 2006 the Company reversed the balance in deferred compensation to additional paid-in capital on its balance sheet.

**Note 10. Related Party Transactions**

During 2000 and 2001 Incyte Corporation purchased shares of the Company's Series A Preferred Stock and Series C Preferred Stock for an aggregate purchase price of \$6.0 million. The Company has two active agreements with Incyte that were entered into in March 2001 in connection with the sale of convertible preferred stock to Incyte; a LifeSeq collaborative agreement and a patent license agreement. The Company also entered into a collaboration and technology transfer agreement with Incyte and a Proteome BioKnowledge Library license agreement with Proteome, Inc., a then wholly owned subsidiary of Incyte, both of which have been terminated. Under these agreements, the Company paid Incyte database access fees of \$1.0 million in 2004 and incurred royalties expense of \$2,000, \$48,000 and \$270,000 in 2004, 2005 and 2006, respectively.

In connection with the completion of the Company's initial public offering on October 4, 2005, Incyte's shares of the Company's preferred stock were converted into common stock. Additionally, in connection with its initial public offering, the Company exercised an election under which Incyte was required to acquire an additional \$5.0 million of the Company's common stock. One of the Company's directors is also director of Incyte and holds shares, directly or beneficially, of both companies. As of December 31, 2006, Incyte had completely divested its holdings in the Company's common stock.

## GENOMIC HEALTH, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

**Note 11. Income Taxes**

The Company has not recognized a provision for income taxes for any of the periods presented because the Company has incurred operating losses to date.

As of December 31, 2006 and 2005, the Company had deferred tax assets of approximately \$50.7 million and \$39.4 million, respectively. Realization of the deferred tax assets is dependent upon future taxable income, if any, the amount and timing of which are uncertain. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The net valuation allowance increased by approximately \$11.3 million, \$12.3 million and \$10.1 million during the years ended December 31, 2006, 2005 and 2004, respectively. Deferred tax assets primarily relate to net operating loss and tax credit carryforwards.

The tax effects of temporary differences and carryforwards that give rise to significant portions of deferred tax assets and liabilities consist of the following:

	December 31,	
	2006	2005
	(In thousands)	
Deferred tax assets:		
Net operating loss carryforwards	\$45,503	\$36,157
Capitalized costs	1,310	1,428
Research tax credits	2,684	1,871
Other	1,170	(96)
Total deferred tax assets	50,667	39,360
Valuation allowance	(50,667)	(39,360)
Net deferred tax assets	\$-	\$-

As of December 31, 2006, the Company had federal and state net operating loss carryforwards of approximately \$114.2 million and \$111.1 million, respectively, and federal and state research and development tax credit carryforwards of approximately \$1.6 million and \$1.6 million, respectively. The net operating loss and tax credit carryforwards will expire at various dates beginning in 2013 if not utilized.

Utilization of the net operating loss and tax credit carryforwards may be subject to a substantial annual limitation due to ownership change limitations defined by the Internal Revenue Code of 1986, as amended, and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization.

**Note 12. Subsequent Events**

In January 2007, the Company entered into a non-cancelable lease for an additional 48,000 square feet of laboratory and office space near the location the Company currently occupies. The lease has a term of six years and includes lease incentive obligations of \$420,000, which are being amortized on a straight-line basis over the life of the lease. Under the new lease, the Company is required to make aggregate rent payments of \$375,000 in 2007, \$595,000 in 2008, \$741,000 in 2009, \$835,000 in 2010 and \$1.0 million in 2011 and thereafter. In connection with this lease, the Company paid a cash security deposit of \$151,000.



## GENOMIC HEALTH, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

**Note 13. Selected Quarterly Financial Data (Unaudited)**

The following table contains selected unaudited statement of operations information for each of the quarters in 2006 and 2005. The Company believes that the following information reflects all adjustments, consisting of only normal recurring adjustments, necessary for a fair presentation of the information for the periods presented. The operating results for any quarter are not necessarily indicative of results for any future period.

<u>Quarter Ended</u>	<u>March 31</u>	<u>June 30</u>	<u>September 30</u>	<u>December 31</u>
	<u>(In thousands, except per share data)</u>			
<u>2006</u>				
Revenue(1)	\$5,060	\$8,379	\$7,119	\$8,616
Net loss	(6,830 )	(4,915 )	(8,180 )	(8,995 )
Basic and diluted net loss per common share	\$(0.28 )	\$(0.20 )	\$(0.33 )	\$(0.37 )
<u>2005</u>				
Revenue	\$442	\$1,243	\$1,592	\$1,925
Net loss	(7,586 )	(8,113 )	(7,445 )	(8,217 )
Basic and diluted net loss per common share	\$(3.85 )	\$(4.07 )	\$(3.42 )	\$(0.34 )

The increases in revenue in first and second quarters of 2006 were attributable to increased demand for *Oncotype DX* following clinical presentations at major symposia in December 2005 and February 2006, as well as the May 2006 publication of two peer-reviewed articles supporting the use and reimbursement of *Oncotype DX*. In addition, several third-party payors, including National Heritage Insurance Company (NHIC), the local Medicare carrier for California with jurisdiction for claims submitted by the Company for Medicare patients, issued positive coverage determinations for the test.

Per share amounts for the quarters and full year have been calculated separately. Accordingly quarterly amounts may not add to the annual amount because of differences in the weighted-average common shares outstanding during each period principally due to the effect of the Company's issuing shares of its common stock during the year. Basic and diluted net loss per share decreased significantly from the third quarter of 2005 to the fourth quarter of 2005 due to the increase in outstanding common stock resulting from the Company's initial public offering on September 28, 2005.

Basic and diluted net loss per common share are identical as common equivalent shares are excluded from the calculation because their effect is anti-dilutive.

**ITEM 9. *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.***

Not applicable.

**ITEM 9A. *Controls and Procedures.***

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

Based on their evaluation as of the end of the period covered by this Annual Report on Form 10-K, our chief executive officer and chief financial officer have concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

(b) *Management’s Annual Report on Internal Control over Financial Reporting.* Our management is responsible for establishing and maintaining internal control over our financial reporting. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of the effectiveness of internal control to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate. Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, assessed the effectiveness of our internal control over financial reporting as of December 31, 2006. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission, or COSO, in *Internal Control-Integrated Framework*. Based on the assessment using those criteria, management concluded that, as of December 31, 2006, our internal control over financial reporting was effective. Our independent registered public accounting firm, Ernst & Young LLP, audited the consolidated financial statements included in this Annual Report on Form 10-K and have issued an audit report on management’s assessment of our internal control over financial reporting as well as on the effectiveness our internal control over financial reporting. The report on the audit of internal control over financial reporting appears on page 59.

(b) *Changes in internal controls.* There was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) identified in connection with the evaluation described in Item 9A(a) above that occurred during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. *Other Information.***

None

## PART III

### **ITEM 10. *Directors, Executive Officers and Corporate Governance***

The information required by this item with respect to directors is incorporated by reference from the information under the caption “Election of Directors” contained in our Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for our 2007 Annual Meeting of Stockholders to be held on June 12, 2007, or Proxy Statement. Certain information required by this item concerning executive officers is set forth in Part I of this Report under the caption “Executive Officers of the Registrant” and is incorporated herein by reference.

Item 405 of Regulation S-K calls for disclosure of any known late filing or failure by an insider to file a report required by Section 16(a) of the Exchange Act. This disclosure is contained in the section entitled “Section 16(a) Beneficial Ownership Reporting Compliance” in the Proxy Statement and is incorporated herein by reference.

We have adopted a Code of Business Conduct that applies to all of our officers and employees, including our Chief Executive Officer, President and Chief Operating Officer, Chief Financial Officer and other employees who perform financial or accounting functions. The Code of Business Conduct sets forth the basic principles that guide the business conduct of our employees. We have also adopted a Senior Financial Officers’ Code of Ethics that specifically applies to our Chief Executive Officer, President and Chief Operating Officer, Chief Financial Officer, and key management employees. Stockholders may request a free copy of our Code of Business Conduct and Ethics and our Senior Financial Officers’ Code of Ethics by contacting Genomic Health, Inc., Attention: CFO, 301 Penobscot Drive, Redwood City, California 94063.

To date, there have been no waivers under our Code of Business Conduct and Ethics or Senior Financial Officers’ Code of Ethics. We intend to disclose future amendments to certain provisions of our Code of Business Conduct and Ethics or Senior Financial Officers’ Code of Ethics or any waivers, if and when granted, of our Code of Business Conduct and Ethics or Senior Financial Officers’ Code of Ethics on our website at <http://www.genomichealth.com> within four business days following the date of such amendment or waiver.

Our Board of Directors has appointed an Audit Committee, comprised of Mr. Randall S. Livingston, as Chairman, Mr. Samuel D. Colella and Mr. Michael D. Goldberg. The Board of Directors has determined that Mr. Livingston qualifies as an Audit Committee Financial Expert under the definition outlined by the Securities and Exchange Commission. In addition, each of the members of the Audit Committee qualifies as an “independent director” under the current rules of the NASDAQ Global Market and Securities and Exchange Commission rules and regulations.

### **ITEM 11. *Executive Compensation***

The information required by this item is incorporated by reference from the information under the captions “Election of Directors – Compensation of Directors” and “Executive Compensation” contained in the Proxy Statement.

### **ITEM 12. *Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

The information required by this item is incorporated by reference from the information under the caption “Security Ownership of Certain Beneficial Owners and Management” contained in the Proxy Statement.

Information about securities authorized for issuance under our equity compensation plans appears under the caption “Equity Compensation Plan Information” in the Proxy Statement. That portion of the Proxy Statement is incorporated by reference into this report.

### **ITEM 13. *Certain Relationships and Related Transactions, and Director Independence***

The information required by this item is incorporated by reference from the information under the caption “Certain Relationships and Related Transactions” contained in the Proxy Statement.



**ITEM 14. *Principal Accounting Fees and Services.***

The information required by this item is incorporated by reference from the information under the caption “Principal Accountant Fees and Services” contained in the Proxy Statement.

**PART IV**

**ITEM 15. *Exhibits and Financial Statement Schedules.***

**(a) Documents filed as part of this report:**

(1) Financial Statements

Reference is made to the Index to Consolidated Financial Statements of Genomic Health under Item 8 of Part II hereof.

(2) Financial Statement Schedules

All financial statement schedules have been omitted because they are not applicable or not required or because the information is included elsewhere in the Consolidated Financial Statements or the Notes thereto.

(3) Exhibits

See Item 15(b) below. Each management contract or compensatory plan or arrangement required to be filed has been identified.

**(b) Exhibits**

<u>Exhibit No.</u>	<u>Description of Document</u>
3(i)	Restated Certificate of Incorporation of the Company (incorporated by reference to exhibit 3.3 filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
3(ii)	Amended and Restated Bylaws of the Company, as amended April 27, 2006 (incorporated by reference to exhibit 3(ii) to the Company’s Current Report on Form 8-K filed on May 2, 2006).
4.1	Specimen Common Stock Certificate (incorporated by reference to the exhibit of the same number filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
4.2	Amended and Restated Investors’ Rights Agreement, dated February 9, 2004 between the Company and certain of its stockholders (incorporated by reference to the exhibit of the same number filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.1#	Form of Indemnification Agreement between the Company and its officers and directors (incorporated by reference to the exhibit of the same number filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.2#	2001 Stock Incentive Plan and forms of agreements thereunder (incorporated by reference to the exhibit of the same number filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.3#	2005 Stock Incentive Plan and forms of agreements thereunder (incorporated by reference to the exhibit of the same number filed with Registration Statement on Form S-1 (File 333-126626), as amended, declared effective on September 28, 2005).
10.4.1	Sublease Agreement dated June 1, 2001 between the Company and Corixa Corporation (incorporated by reference to the exhibit of the same number filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.4.2	First Amendment to Sublease Agreement dated October 29, 2003 between the Company and Corixa Corporation (incorporated by reference to the exhibit of the same number filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).





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<u>Exhibit No.</u>	<u>Description of Document</u>
10.4.3	Second Amendment to Sublease Agreement dated January 31, 2005 between the Company and Corixa Corporation (incorporated by reference to the exhibit of the same number filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.5†	PCR Patent License Agreement dated February 21, 2005 between the Company and Roche Molecular Systems, Inc. (incorporated by reference to exhibit 10.8 filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.6.1	Master Security Agreement dated March 30, 2005 between the Company and Oxford Finance Corporation (incorporated by reference to exhibit 10.9.1 filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.6.2	Form of Promissory Note (Equipment) issued by the Company in favor of Oxford Finance Corporation (incorporated by reference to exhibit 10.9.2 filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.6.3	Form of Promissory Note (Computers and Software) issued by the Company in favor of Oxford Finance Corporation (incorporated by reference to exhibit 10.9.3 filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.6.4*	Schedule of Promissory Notes issued by the Company in favor of Oxford Finance Corporation.
10.7	Lease dated September 23, 2005 between the Company and Metropolitan Life Insurance Company (incorporated by reference to exhibit 10.10 filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
10.8*	Lease dated January 2, 2007 between the Company and Metropolitan Life Insurance Company.
21.1	List of Subsidiaries (incorporated by reference to the exhibit of the same number filed with Registration Statement on Form S-1 (File No. 333-126626), as amended, declared effective on September 28, 2005).
23.1*	Consent of Ernst & Young LLP, independent registered public accounting firm.
24.1*	Power of Attorney (see page 84 of this Form 10-K).
31.1*	Rule 13a – 14(a) Certification of Chief Executive Officer.
31.2*	Rule 13a – 14(a) Certification of the Chief Financial Officer.
32.1**	Statement of the Chief Executive Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).
32.2**	Statement of the Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. Section 1350).

\* Filed herewith.

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

† Confidential treatment has been granted with respect to certain portions of these agreements.

# Indicates management contract or compensatory plan or arrangement.

Copies of above exhibits not contained herein are available to any stockholder, upon payment of a reasonable per page fee, upon written request to: Chief Financial Officer, Genomic Health, Inc., 301 Penobscot Drive, Redwood City, California 94063.

### **(c) Financial Statements and Schedules**

Reference is made to Item 15(a)(2) above.



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<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Samuel D. Colella</u> Samuel D. Colella	Director	March 15, 2007
<u>/s/ Michael D. Goldberg</u> Michael D. Goldberg	Director	March 15, 2007
<u>/s/ Randall S. Livingston</u> Randall S. Livingston	Director	March 15, 2007
<u>/s/ Woodrow A. Myers</u> Woodrow A. Myers Jr., MD	Director	March 15, 2007

**EXHIBIT INDEX**

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\* Filed herewith.

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

† Confidential treatment has been granted with respect to certain portions of these agreements.

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Copies of above exhibits not contained herein are available to any stockholder, upon payment of a reasonable per page fee, upon written request to: Chief Financial Officer, Genomic Health, Inc., 301 Penobscot Drive, Redwood City, California 94063.





**SCHEDULE OF PROMISSORY NOTES**  
 Containing Provisions Set Forth in Forms of Promissory Note  
 Filed as Exhibit 10.6.2 and 10.6.3

<u>Promissory Note No.</u>	<u>Type of Promissory Note</u>	<u>Date of Issuance</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
1	Equipment	March 30, 2005	\$ 1,601,828.05	10.65%
2	Computers and Soft Costs	March 30, 2005	\$ 513,384.10	10.65%
3	Equipment	May 4, 2005	\$ 833,152.88	10.30%
4	Computers and Soft Costs	May 4, 2005	\$ 119,989.15	10.30%
5	Equipment	June 27, 2005	\$ 127,664.50	10.23%
6	Computers and Soft Costs	June 27, 2005	\$ 63,560.15	10.23%
7	Equipment	July 27, 2005	\$ 197,555.53	10.49%
8	Computers and Soft Costs	July 27, 2005	\$ 48,576.99	10.49%
9	Equipment	August 30, 2005	\$ 173,901.92	10.56%
10	Computers and Soft Costs	August 30, 2005	\$ 25,830.55	10.56%
11	Equipment	November 21, 2005	\$ 181,637.96	11.01%
12	Computers and Soft Costs	November 21, 2005	\$ 202,658.69	11.01%
13	Equipment	March 31, 2006	\$ 541,101.75	11.18%
14	Computers and Soft Costs	March 31, 2006	\$ 369,157.07	11.18%
15	Equipment	November 30, 2006	\$ 831,902.92	11.30%
16	Computers and Soft Costs	November 30, 2006	\$ 3,169,606.50	11.30%



LEASE

BETWEEN

METROPOLITAN LIFE INSURANCE COMPANY (LANDLORD)

AND

GENOMIC HEALTH, INC. (TENANT)

SEAPORT CENTRE

Redwood City, California

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ARTICLE ONE  
BASIC LEASE PROVISIONS

1.01 BASIC LEASE PROVISIONS

In the event of any conflict between these Basic Lease Provisions and any other Lease provision, such other Lease provision shall control.

(1) BUILDING AND ADDRESS:

As of the Date of Lease, the Building has a street address of 101 Galveston Drive Redwood City, California 94063  
Building Number 10, located in Phase II ("Tenant's Phase") of Seaport Centre

(2) LANDLORD AND ADDRESS:

Metropolitan Life Insurance Company,  
a New York corporation

Notices to Landlord shall be addressed:

Metropolitan Life Insurance Company  
c/o Seaport Centre Manager  
701 Chesapeake Drive  
Redwood City, CA 94063

with copies to the following:

Metropolitan Life Insurance Company  
400 South El Camino Real, Suite 800  
San Mateo, CA 94402  
Attention: Assistant Vice President

(3) TENANT; CURRENT ADDRESS & TAX ID:

- (a) Name: Genomic Health, Inc. ("Genomic Health")  
(b) State of incorporation: a Delaware corporation  
(c) Tax Identification Number: 77-0552594

Tenant shall notify Landlord of any change in the foregoing.

Notices to Tenant shall be addressed:

Genomic Health, Inc.  
301 Penobscot Drive  
Redwood City, CA 94063  
Attention: Chief Financial Officer

with a copy to:

Pillsbury Winthrop Shaw Pittman LLP  
50 Fremont Street  
San Francisco, CA 94105  
Attention: Rachel B. Horsch

(4) DATE OF LEASE: as of January 4, 2007

(5) LEASE TERM: The Term is the period of almost 5 years which commences on the Commencement Date and expires on the Expiration Date, as both are defined below.

(6) COMMENCEMENT DATE: March 1, 2007, subject to Rider 2.

(7) EXPIRATION DATE: February 24, 2012.

(8) MONTHLY BASE RENT: The initial monthly installment is due upon Tenant' s execution.

Period from Commencement Date through Expiration Date	Monthly	Monthly Rate/SF of Rentable Area
Months 01 – 12	\$ 37,500.00	Special Negotiated Concession - Rate Not Applicable
Months 13 – 24	\$ 52,000.00	Special Negotiated Concession - Rate Not Applicable
Months 25 – 36	\$ 63,701.10	\$ 1.35
Months 37 – 48	\$ 70,779.00	\$ 1.50
Months 49 – Expiration Date	\$ 75,497.60	\$ 1.60

(9) RENT ADJUSTMENT DEPOSIT: The Rent Adjustment Deposit (at the initial monthly rate, until further notice) shall be Twenty-Seven Thousand Three Hundred Sixty-Seven and 88/100 Dollars (\$27,367.88) and is due upon Tenant' s execution.

(10) RENTABLE AREA OF THE PREMISES: 47,186 square feet

(11) RENTABLE AREA OF THE BUILDING 47,186 square feet

(12) RENTABLE AREA OF THE PHASE: 235,620 square feet

(13) RENTABLE AREA OF THE PROJECT: 537,444 square feet

SECURITY: The cash and/or Letter of Credit in the amount of One Hundred Fifty Thousand Nine Hundred Ninety-Five and  
(14) no/100 Dollars (\$150,995.00) (and any proceeds of the Letter of Credit drawn and held by Landlord) as provided in Article Five.

(15) SUITE NUMBER &/OR ADDRESS OF PREMISES: 101 Galveston Drive, Redwood City, CA 94063, until further notice

(16) TENANT' S SHARE:

Tenant' s Building Share:	100	%
Tenant' s Phase Share:	20.0263%	
Tenant' s Project Share:	08.7797%	

(17) TENANT' S USE OF PREMISES: General office use; biotechnology/pharmaceutical research and development, assembly, biotechnical or pharmaceutical manufacturing, and warehousing.

(18) PARKING SPACES: 156

(19) BROKERS:

Landlord' s Broker: Cornish & Carey Commercial

Tenant' s Broker: BT Commercial and Technology Commercial

## 1.02 ENUMERATION OF EXHIBITS & RIDER(S)

The Exhibits and Rider(s) set forth below and attached to this Lease are incorporated in this Lease by this reference:

EXHIBIT A Plan of Premises

EXHIBIT B Workletter Agreement

EXHIBIT C Site Plan of Project

EXHIBIT D Permitted Hazardous Material

EXHIBIT E Form of Letter of Credit Acceptable from Silicon Valley Bank

EXHIBIT F Fair Market Rental Rate

EXHIBIT G Tenant' s Personal Property

EXHIBIT H Form of Letter of Credit

RIDER 1 Commencement Date Agreement

RIDER 2 Additional Provisions

## 1.03 DEFINITIONS

For purposes hereof, the following terms shall have the following meanings:

**ADJUSTMENT YEAR:** The applicable calendar year or any portion thereof after the Commencement Date of this Lease for which a Rent Adjustment computation is being made.

**AFFILIATE:** Any Person (as defined below) which is controlled by, controls, or is under common control with Tenant. The word Person means an individual, partnership, trust, corporation, limited liability company, firm or other entity. For purposes of this definition, the word "control," means, with respect to a Person that is a corporation or a limited liability company, the right to exercise, directly or indirectly, more than sixty percent (60%) of the voting rights attributable to the shares or membership interests of the controlled Person and, with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power at all times to direct or cause the direction of the management of the controlled Person.

**BUILDING:** Each building in which the Premises is located, as specified in Section 1.01(1).

**BUILDING OPERATING EXPENSES:** Those Operating Expenses described in Section 4.01.

COMMENCEMENT DATE: The date specified in Section 1.01(6) as the Commencement Date, unless changed by operation of Article Two or Rider 2.

**COMMON AREAS:** All areas of the Project made available by Landlord from time to time for the general common use or benefit of the tenants of the Building or Project, and their employees and invitees, or the public, as such areas currently exist and as they may be changed from time to time.

**DECORATION:** Tenant Alterations which do not require a building permit and which do not affect the facade or roof of the Building, or involve any of the structural elements of the Building, or involve any of the Building' s systems, including its electrical, mechanical, plumbing, security, heating, ventilating, air-conditioning, communication, and fire and life safety systems.

**DEFAULT RATE:** Two (2) percentage points above the rate then most recently announced by Bank of America N.T.& S.A. at its San Francisco main office as its corporate base lending rate, from time to time announced, but in no event higher than the maximum rate permitted by Law.

**DELIVERY DATE:** The date for Landlord' s delivery to Tenant of possession of the Premises, if different from the Commencement Date, as provided in Rider 2.

**ENVIRONMENTAL LAWS:** All Laws governing the use, storage, disposal or generation of any Hazardous Material or pertaining to environmental conditions on, under or about the Premises or any part of the Project, including the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

**EXPIRATION DATE:** The date specified in Section 1.01(7) unless changed by operation of Article Two or Rider 2.

**FORCE MAJEURE:** Any accident, casualty, act of God, war or civil commotion, strike or labor troubles, or any cause whatsoever beyond the reasonable control of Landlord, including water shortages, energy shortages or governmental preemption in connection with an act of God, a national emergency, or by reason of Law, or by reason of the conditions of supply and demand which have been or are affected by act of God, war or other emergency.

**HAZARDOUS MATERIAL:** Such substances, material and wastes which are or become regulated under any Environmental Law; or which are classified as hazardous or toxic or medical waste or biohazardous waste under any Environmental Law; and explosives, firearms and ammunition, flammable material, radioactive material, asbestos, polychlorinated biphenyls and petroleum and its byproducts.

**INDEMNITEES:** Collectively, Landlord, any Mortgagee or ground lessor of the Property, the property manager and the leasing manager for the Property and their respective directors, officers, agents and employees.

**LAND:** The parcel(s) of real estate on which the Building and Project are located.

**LANDLORD WORK:** The construction or installation of improvements to be furnished by Landlord, if any, specifically described in Rider 2 attached hereto.

**LAWS OR LAW:** All laws, ordinances, rules, regulations, other requirements, orders, rulings or decisions adopted or made by any governmental body, agency, department or judicial authority having jurisdiction over the Property, the Premises or Tenant' s activities at the Premises and any covenants, conditions or restrictions of record which affect the Property.

**LEASE:** This instrument and all exhibits and riders attached hereto, as may be amended from time to time.

**LEASE YEAR:** The twelve month period beginning on the first day of the first month following the Commencement Date (unless the Commencement Date is the first day of a calendar month in which case beginning on the Commencement Date), and each subsequent twelve month, or shorter, period until the Expiration Date.

**MONTHLY BASE RENT:** The monthly rent specified in Section 1.01(8).

**MORTGAGEE:** Any holder of a mortgage, deed of trust or other security instrument encumbering the Property.

**NATIONAL HOLIDAYS:** New Year' s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and other holidays recognized by the Landlord and the janitorial and other unions servicing the Building in accordance with their contracts.

**OPERATING EXPENSES:** All Taxes, costs, expenses and disbursements of every kind and nature which Landlord shall pay or become obligated to pay in connection with the ownership, management, operation, maintenance, replacement and repair of the Property (including the amortized portion of any capital expenditure or improvement, together with interest thereon, expenses of changing utility service providers, and any dues, assessments and other expenses pursuant to any covenants, conditions and restrictions, or any reciprocal easements, or any owner' s association now or hereafter affecting the Project; provided however that with respect to any expenses, dues, assessments and other expenses pursuant to any covenants, conditions and restrictions, or any reciprocal easements or any owner' s association hereafter affecting the Project, then such costs and expenses shall only be deemed to be Operating Expenses to the extent that such costs or expenses could otherwise be deemed to be Operating Expenses pursuant to the provisions set forth in this section). Operating Expenses shall be allocated among the



categories of Project Operating Expenses, Building Operating Expenses or Phase Operating Expenses as provided in Article Four. If any Operating Expense relates to more than one calendar year, such expense shall be proportionately allocated among such related calendar years. Operating Expenses shall include the following, by way of illustration only and not limitation: (1) all Taxes; (2) all insurance premiums and other costs (including deductibles), including the cost of rental insurance; (3) all license, permit and inspection fees; (4) all costs of utilities fuels and related services, including water, sewer, light, telephone, power and steam connection, service and

related charges; (5) all costs to repair, maintain and operate heating, ventilating and air conditioning systems, including preventive maintenance incurred by Landlord, if any; (6) all janitorial, landscaping and security services; (7) all wages, salaries, payroll taxes, fringe benefits and other labor costs, including the cost of workers' compensation and disability insurance; (8) all costs of operation, maintenance and repair of all parking facilities and other common areas; (9) all supplies, materials, equipment and tools; (10) dues, assessments and other expenses pursuant to any covenants, conditions and restrictions, or any reciprocal easements, or any owner's association now or hereafter affecting the Project; (11) modifications to the Building or the Project occasioned by Laws now or hereafter in effect, but only as amortized over the useful life of the capital item as reasonably determined by Landlord; (12) the total charges of any independent contractors employed in the care, operation, maintenance, repair, leasing and cleaning of the Project, including landscaping, roof maintenance, and repair, maintenance and monitoring of life-safety systems, plumbing systems, electrical wiring and Project signage; (13) the cost of accounting services necessary to compute the rents and charges payable by tenants at the Project; (14) exterior window and exterior wall cleaning and painting; (15) managerial and administrative expenses; (16) all costs in connection with the exercise facility at the Project; (17) all costs and expenses related to Landlord's retention of consultants in connection with the routine review, inspection, testing, monitoring, analysis and control of Hazardous Material, and retention of consultants in connection with the clean-up of Hazardous Material (to the extent not recoverable from a particular tenant of the Project), and all costs and expenses related to the implementation of recommendations made by such consultants concerning the use, generation, storage, manufacture, production, storage, release, discharge, disposal or clean-up of Hazardous Material on, under or about the Premises or the Project (to the extent not recoverable from a particular tenant of the Project); (18) all capital improvements made for the purpose of reducing or controlling other Operating Expenses, and all other capital expenditures, but only as amortized over the useful life of such capital improvement as reasonably determined by Landlord, together with interest on the unamortized portion; (19) all property management costs and fees, including all costs in connection with the Project property management office; and (20) all fees or other charges incurred in conjunction with voluntary or involuntary membership in any energy conservation, air quality, environmental, traffic management or similar organizations. Operating Expenses shall not include: (a) costs of alterations of space to be occupied by new or existing tenants of the Project; (b) depreciation charges; (c) interest and principal payments on loans (except for loans for capital expenditures or improvements which Landlord is allowed to include in Operating Expenses as provided above); (d) ground rental payments; (e) real estate brokerage and leasing commissions; (f) advertising and marketing expenses; (g) costs of Landlord reimbursed by insurance proceeds; (h) costs for which the Landlord is reimbursed by any other tenant or occupant of the Building (other than payments comparable to Rent Adjustments hereunder) or by any tenant's insurance carrier or by anyone else, and electric power costs for which any tenant directly contracts with the local public service company; (i) expenses incurred in negotiating leases of other tenants in the Project or enforcing lease obligations of other tenants in the Project; (j) Landlord's property manager's corporate general overhead or corporate general administrative expenses; (k) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Building, Project or Phase, unless such wages and benefits are prorated to reflect time spent on operation and managing the Building, Project or Phase; (l) Landlord's corporate general overhead or corporate general administrative expenses associated with the operation of the business of the entity which constitutes the Landlord, as the same are distinguished from the costs of operation of the Building, Project or Phase; (m) executives' salaries; (n) any bad debt loss, rent loss, or reserves for bad debts or rent loss; (o) costs of Landlord's charitable or political contributions; (p) the costs of any Tenant Work (as defined in the Workletter), and (q) costs incurred in connection with Hazardous Materials to the extent such Hazardous Materials were present on the Project prior to the Delivery Date.

**PHASE:** Phase means any individual Phase of the Project, as more particularly described in the definition of Project.

**PHASE OPERATING EXPENSES:** Those Operating Expenses described in Section 4.01.

**PREMISES:** The Premises consists of the entire Rentable Area of the Building listed in Section 1.01 and is depicted on Exhibit A attached hereto.

**PROJECT or PROPERTY:** As of the date hereof, the Project is known as Seaport Centre and consists of those buildings (including the Building) whose general location is shown on the Site Plan of the Project attached as Exhibit C, located in Redwood City, California, associated vehicular and parking areas, landscaping and improvements, together with the Land, any associated interests in real property, and the personal property, fixtures, machinery, equipment, systems and apparatus located in or used in conjunction with any of the foregoing. The Project may also be referred to as the Property. As of the date hereof, the Project is divided into Phase I and Phase II, which are generally designated on Exhibit C, each of which may individually be referred to as a Phase. Landlord reserves the right from time to time to add or remove buildings, areas and improvements to or from a Phase or the Project, or to add or remove a Phase to or from the Project. In the event of any such addition or removal which affects Rentable Area of the Project or a Phase, Landlord shall make a corresponding recalculation and adjustment of any affected Rentable Area and Tenant's Share.

**PROJECT OPERATING EXPENSES:** Those Operating Expenses described in Section 4.01.

**REAL PROPERTY:** The Property excluding any personal property.

RENT: Collectively, Monthly Base Rent, Rent Adjustments and Rent Adjustment Deposits, and all other charges, payments, late fees or other amounts required to be paid by Tenant under this Lease.

RENT ADJUSTMENT: Any amounts owed by Tenant for payment of Operating Expenses. The Rent Adjustments shall be determined and paid as provided in Article Four.

RENT ADJUSTMENT DEPOSIT: An amount equal to Landlord' s estimate of the Rent Adjustment attributable to each month of the applicable Adjustment Year. On or before the Commencement Date and the beginning of each subsequent Adjustment Year or with Landlord' s Statement (defined in Article Four), Landlord may estimate and notify Tenant in writing of its estimate of Operating Expenses, including Project Operating Expenses, Building

Operating Expenses and Phase Operating Expenses, and Tenant' s Share of each, for the applicable Adjustment Year. The Rent Adjustment Deposit applicable for the calendar year in which the Commencement Date occurs shall be the amount, if any, specified in Section 1.01(9). Nothing contained herein shall be construed to limit the right of Landlord from time to time during any calendar year to revise its estimates of Operating Expenses and to notify Tenant in writing thereof and of revision by prospective adjustments in Tenant' s Rent Adjustment Deposit payable over the remainder of such year. The last estimate by Landlord shall remain in effect as the applicable Rent Adjustment Deposit unless and until Landlord notifies Tenant in writing of a change.

RENTABLE AREA OF THE BUILDING: The amount of square footage set forth in Section 1.01(11)

RENTABLE AREA OF THE PHASE: The amount of square footage set forth in Section 1.01(12)

RENTABLE AREA OF THE PREMISES: The amount of square footage set forth in Section 1.01(10).

RENTABLE AREA OF THE PROJECT: The amount of square footage set forth in Section 1.01(13), which represents the sum of the rentable area of all space intended for occupancy in the Project.

SECURITY: The cash and/or Letter of Credit specified in Section 1.01, if any, paid or delivered to Landlord as security for Tenant' s performance of its obligations under this Lease, and any proceeds of the Letter of Credit drawn and held by Landlord, all as more particularly provided in Article Five.

SUBSTANTIALLY COMPLETE: The completion of the Landlord Work or Tenant Work, as the case may be, except for minor insubstantial details of construction, decoration or mechanical adjustments which remain to be done.

TAXES: All federal state, and local governmental taxes, assessments (including assessment bonds) and charges of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall pay or become obligated to pay because of or in connection with the ownership, leasing, management, control or operation of the Property or any of its components (including any personal property used in connection therewith), which may also include any rental or similar taxes levied in lieu of or in addition to general real and/or personal property taxes. For purposes hereof, Taxes for any year shall be Taxes which are assessed for any period of such year, whether or not such Taxes are billed and payable in a subsequent calendar year. There shall be included in Taxes for any year the amount of all fees costs and expenses (including reasonable attorneys' fees) paid by Landlord during such year in seeking or obtaining any refund or reduction of Taxes. Taxes for any year shall be reduced by the net amount of any tax refund received by Landlord attributable to such year. If a special assessment payable in installments is levied against any part of the Property, Taxes for any year shall include only the installment of such assessment and any interest payable or paid during such year. Taxes shall not include any federal or state inheritance, general income, gift or estate taxes, except that if a change occurs in the method of taxation resulting in whole or in part in the substitution of any such taxes, or any other assessment, for any Taxes as above defined, such substituted taxes or assessments shall be included in the Taxes.

TENANT ADDITIONS: Collectively, Landlord Work, Tenant Work and Tenant Alterations. Tenant' s Personal Property (as set forth in Exhibit G hereto) shall not be deemed to be included in the definition of Tenant Additions.

TENANT ALTERATIONS: Any alterations, improvements, additions, installations or construction in or to the Premises or any Real Property systems serving the Premises done or caused to be done by Tenant after the date hereof, whether prior to or after the Commencement Date (including Tenant Work, but excluding Landlord Work).

TENANT DELAY: Any event or occurrence which delays the Substantial Completion of the Landlord Work which is caused by or is described as follows:

- (i) special work, changes, alterations or additions requested or made by Tenant in the design or finish in any part of the Premises after approval of the plans and specifications (as described in the Rider 2);
- (ii) Tenant' s delay in submitting plans, supplying information, approving plans, specifications or estimates, giving authorizations or otherwise;
- (iii) failure to approve and pay for such work as Landlord undertakes to complete at Tenant' s expense;
- (iv) the performance or completion by Tenant or any person engaged by Tenant of any work in or about the Premises; or
- (v) failure to perform or comply with any obligation or condition binding upon Tenant pursuant to Rider 2, including the failure to approve and pay for such Landlord Work or other items if and to the extent Rider 2 provides they are to be approved or paid by Tenant.

TENANTS FF' E: The property of Tenant described in Section 5 of the Workletter.

TENANT' S PERSONAL PROPERTY: Tenant' s property described on Exhibit G hereto.

TENANT WORK: All work installed or furnished to the Premises by Tenant in connection with Tenant' s initial occupancy pursuant to Rider 2 and the Workletter.

TENANT'S BUILDING SHARE: The share as specified in Section 1.01(16) and Section 4.01.

TENANT'S PHASE: The Phase in which the Premises is located, as indicated in Section 1.01(1).

TENANT'S PHASE SHARE: The share as specified in Section 1.01(16) and Section 4.01.

TENANT' S PROJECT SHARE: The share as specified in Section 1.01(16) and Section 4.01.

TENANT' S SHARE: Shall mean collectively, Tenant' s respective shares of the respective categories of Operating Expenses, as provided in Section 1.01(16) and Section 4.01.

TERM: The term of this Lease commencing on the Commencement Date and expiring on the Expiration Date.

TERMINATION DATE: The Expiration Date or such earlier date as this Lease terminates or Tenant' s right to possession of the Premises terminates.

WORKLETTER: The Agreement regarding the completion of Tenant Work and Landlord Work, if any, set forth in Rider 2 and Exhibit B hereto.

## ARTICLE TWO

### PREMISES, TERM, FAILURE TO GIVE POSSESSION, COMMON AREAS AND PARKING

#### 2.01 LEASE OF PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the Term and upon the terms, covenants and conditions provided in this Lease.

#### 2.02 TERM (See Rider 2)

#### 2.03 FAILURE TO GIVE POSSESSION (See Rider 2)

#### 2.04 AREA OF PREMISES

Landlord and Tenant agree that for all purposes of this Lease the Rentable Area of the Premises, the Rentable Area of the Building, the Rentable Area of the Phase and the Rentable Area of the Project as set forth in Article One are controlling, and are not subject to revision after the date of this Lease, except as otherwise provided herein.

#### 2.05 CONDITION OF PREMISES (See Rider 2)

#### 2.06 COMMON AREAS & PARKING

(a) Right to Use Common Areas. Tenant shall have the non-exclusive right, in common with others, to the use of any common entrances, ramps, drives and similar access and serviceways and other Common Areas in the Project. The rights of Tenant hereunder in and to the Common Areas shall at all times be subject to the rights of Landlord and other tenants and owners in the Project who use the same in common with Tenant, and it shall be the duty of Tenant to keep all the Common Areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant' s operations. Tenant shall not use the Common Areas or common facilities of the Building or the Project, including the Building' s electrical room, parking lot or trash enclosures, for storage purposes. Nothing herein shall affect the right of Landlord at any time to remove any persons not authorized to use the Common Areas or common facilities from such areas or facilities or to prevent their use by unauthorized persons.

(b) Changes in Common Areas. Landlord reserves the right, at any time and from time to time to (i) make alterations in or additions to the Common Areas or common facilities of the Project, including constructing new buildings or changing the location, size, shape or number of the driveways, entrances, parking spaces, parking areas, loading and unloading areas, landscape areas and walkways, (ii) designate property to be included in or eliminate property from the Common Areas or common facilities of the Project, (iii) close temporarily any of the Common Areas or common facilities of the Project for maintenance purposes, and (iv) use the Common Areas and common facilities of the Project while engaged in making alterations in or additions and repairs to the Project; provided however, that (x) such changes do not materially adversely affect Tenant' s use of the Premises or increase Tenant' s costs hereunder, and (y) reasonable access to the Premises and parking at or near the Project remains available.

(c) Parking. During the Term, Tenant shall have the right to use the number of Parking Spaces specified in Section 1.01(18) for parking on an unassigned basis on that portion of the Project designated by Landlord from time to time for parking. Tenant acknowledges and agrees that the parking spaces in the Project' s parking facility may include a mixture of spaces for compact vehicles as well as full-size passenger automobiles, and that Tenant shall not use parking spaces for vehicles larger than the striped size of the parking spaces. Tenant shall comply with any and all parking rules and regulations if and as from time to time established by Landlord. Tenant shall not allow any vehicles using Tenant' s parking privileges to be parked, loaded or unloaded except in accordance with this Section, including in the areas and in the manner designated by Landlord for such activities. If any vehicle owned or operated by Tenant or any Tenant Parties (as defined in Article Seven) is using the parking or loading areas contrary to any provision of this Section, Landlord shall have the right, in addition to all other rights and remedies of Landlord under this Lease, to remove or tow away the vehicle without prior notice to Tenant, and the cost thereof shall be paid to Landlord within ten (10) business days after notice from Landlord to Tenant.



ARTICLE THREE  
RENT

Tenant agrees to pay to Landlord via wire transfer in accordance with instructions set forth below (as modified by Landlord from time to time), or to such other persons, or at such other places or in such manner designated by Landlord, without any prior demand therefor in immediately available funds and without any deduction or offset whatsoever, Rent, including Monthly Base Rent and Rent Adjustments in accordance with Article Four, during the Term. Monthly Base Rent shall be paid monthly in advance on the first day of each month of the Term, except that

the first installment of Monthly Base Rent shall be paid by Tenant to Landlord concurrently with execution of this Lease by means of Tenant's check payable to the order of Metropolitan Life Insurance Company. Monthly Base Rent shall be prorated for partial months within the Term. Unpaid Rent shall bear interest at the Default Rate from the date due until paid. Tenant's covenant to pay Rent shall be independent of every other covenant in this Lease. Until further notice to Tenant, Rent paid by wire transfer shall be wired to:

Wells Fargo Bank, San Francisco, CA,  
A/C # 482-9605856  
Routing #121000248  
A/C Name: CBREITF – Seaport II

## ARTICLE FOUR OPERATING EXPENSES, RENT ADJUSTMENTS AND PAYMENTS

### 4.01 TENANT'S SHARE OF OPERATING EXPENSES

Tenant shall pay Tenant's Share of Operating Expenses in the respective shares of the respective categories of Operating Expenses as set forth below.

(a) Tenant's Project Share of Project Operating Expenses, which is the percentage obtained by dividing the rentable square footage of the Premises by the rentable square footage of the Project and as of the date hereof equals the percentage set forth in Section 1.01(16);

(b) Tenant's Building Share of Building Operating Expenses, which is the percentage obtained by dividing the rentable square footage of the Premises respectively for each building in which the Premises is located by the total rentable square footage of such building and as of the date hereof equals the percentage set forth in Section 1.01(16);

(c) Tenant's Phase Share of Phase Operating Expenses, which is the percentage obtained by dividing the aggregate rentable square footage of the Premises by the total rentable square footage of Tenant's Phase and as of the date hereof equals the percentage set forth in Section 1.01(16);

(d) Project Operating Expenses shall mean all Operating Expenses that are not included as Phase Operating Expenses (defined below) and that are not either Building Operating Expenses or operating expenses directly and separately identifiable to the operation, maintenance or repair of any other building located in the Project, but Project Operating Expenses includes operating expenses allocable to any areas of the Building or any other building during such time as such areas are made available by Landlord for the general common use or benefit of all tenants of the Project, and their employees and invitees, or the public, as such areas currently exist and as they may be changed from time to time;

(e) Building Operating Expenses shall mean Operating Expenses that are directly and separately identifiable to each building in which the Premises or part thereof is located;

(f) Phase Operating Expenses shall mean Operating Expenses that Landlord may allocate to a Phase as directly and separately identifiable to all buildings located in the Phase (including but not limited to the Building) and may include Project Operating Expenses that are separately identifiable to a Phase;

(g) Landlord shall have the right to allocate a particular item or portion of Operating Expenses as any one of Project Operating Expenses, Building Operating Expenses or Phase Operating Expenses; however, in no event shall any portion of Building Operating Expenses, Project Operating Expenses or Phase Operating Expenses be assessed or counted against Tenant more than once; and.

(h) Notwithstanding anything to the contrary contained in this Section 4.01, as to each specific category of Operating Expense which one or more tenants of the Building either pays directly to third parties or specifically reimburses to Landlord (for example, separately contracted janitorial services or property taxes directly reimbursed to Landlord), then, on a category by category basis, the amount of Operating Expenses for the affected period shall be adjusted as follows: (1) all such tenant payments with respect to such category of expense and all of Landlord's costs reimbursed thereby shall be excluded from Operating Expenses and Tenant's Building Share, Tenant's Phase Share or Tenant's Project Share, as the case may be, for such category of Operating Expense shall be adjusted by excluding the square footage of all such tenants, and (2) if Tenant pays or directly reimburses Landlord for such category of Operating Expense, such category of Operating Expense shall be excluded from the determination of Operating Expenses for the purposes of this Lease.

### 4.02 RENT ADJUSTMENTS

Tenant shall pay to Landlord Rent Adjustments with respect to each Adjustment Year as follows:

(a) The Rent Adjustment Deposit shall be paid monthly during the Term with the payment of Monthly Base Rent, except the first installment which shall be paid by Tenant to Landlord concurrently with execution of this Lease. The Rent Adjustment Deposit represents, on a monthly basis, Tenant' s Share of Landlord' s estimate of Operating Expenses, as described in Section 4.01, for the applicable Adjustment Year (or portion thereof); and

(b) Any Rent Adjustments due in excess of the Rent Adjustment Deposits in accordance with Section 4.03.

#### 4.03 STATEMENT OF LANDLORD

Within one hundred twenty (120) days after the end of each calendar year or as soon thereafter as reasonably possible, Landlord will furnish Tenant a statement ("Landlord's Statement") showing the following:

(a) Operating Expenses for the last Adjustment Year showing in reasonable detail the actual Operating Expenses categorized among Project Operating Expenses, Building Operating Expenses and Phase Operating Expenses for such period and Tenant's Share of each as described in Section 4.01 above;

(b) The amount of Rent Adjustments due Landlord for the last Adjustment Year, less credit for Rent Adjustment Deposits paid, if any; and

(c) Any change in the Rent Adjustment Deposit due monthly in the current Adjustment Year, including the amount or revised amount due for months preceding any such change pursuant to Landlord's Statement.

Tenant shall pay to Landlord within ten (10) days after receipt of such statement any amounts for Rent Adjustments then due in accordance with Landlord's Statement. Any amounts due from Landlord to Tenant pursuant to this Section shall be credited to the Rent Adjustment Deposit next coming due, or refunded to Tenant if the Term has already expired provided Tenant is not in default hereunder. No interest or penalties shall accrue on any amounts which Landlord is obligated to credit or refund to Tenant by reason of this Section 4.03. Landlord's failure to deliver Landlord's Statement or to compute the amount of the Rent Adjustments shall not constitute a waiver by Landlord of its right to deliver such items nor constitute a waiver or release of Tenant's obligations to pay such amounts. The Rent Adjustment Deposit shall be credited against Rent Adjustments due for the applicable Adjustment Year. During the last complete calendar year or during any partial calendar year in which the Lease terminates, Landlord may include in the Rent Adjustment Deposit its estimate of Rent Adjustments which may not be finally determined until after the termination of this Lease. Tenant's obligation to pay Rent Adjustments survives the expiration or termination of the Lease. Notwithstanding the foregoing, in no event shall the sum of Monthly Base Rent and the Rent Adjustments be less than the Monthly Base Rent payable.

#### 4.04 BOOKS AND RECORDS

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with sound accounting and management practices, consistently applied. The Tenant or its representative (which representative shall be a certified public accountant licensed to do business in the state in which the Property is located and whose primary business is certified public accounting) shall have the right, for a period of thirty (30) days following the date upon which Landlord's Statement is delivered to Tenant, to examine the Landlord's books and records with respect to the items in the foregoing statement of Operating Expenses and Taxes during normal business hours, upon written notice, delivered at least three (3) business days in advance. If Tenant does not object in writing to Landlord's Statement within sixty (60) days of Tenant's receipt thereof, specifying the nature of the item in dispute and the reasons therefor, then Landlord's Statement shall be considered final and accepted by Tenant. Any amount due to the Landlord as shown on Landlord's Statement, whether or not disputed by Tenant as provided herein shall be paid by Tenant when due as provided above, without prejudice to any such written exception.

#### 4.05 TENANT OR LEASE SPECIFIC TAXES

In addition to Monthly Base Rent, Rent Adjustments, Rent Adjustment Deposits and other charges to be paid by Tenant, Tenant shall pay to Landlord, upon demand, any and all taxes payable by Landlord (other than federal or state inheritance, general income, gift or estate taxes) whether or not now customary or within the contemplation of the parties hereto: (a) upon, allocable to, or measured by the Rent payable hereunder, including any gross receipts tax or excise tax levied by any governmental or taxing body with respect to the receipt of such rent; or (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (c) upon the measured value of Tenant's personal property or trade fixtures located in the Premises or in any storeroom or any other place in the Premises or the Property, or the areas used in connection with the operation of the Property, it being the intention of Landlord and Tenant that, to the extent possible, Tenant shall cause such taxes on personal property or trade fixtures to be billed to and paid directly by Tenant; (d) resulting from Landlord Work, Tenant Work or Tenant Alterations to the Premises, whether title thereto is in Landlord or Tenant; or (e) upon this transaction. Taxes paid by Tenant pursuant to this Section 4.05 shall not be included in any computation of Taxes as part of Operating Expenses.

### ARTICLE FIVE SECURITY

(a) Tenant, at Tenant's sole cost and expense, concurrently with execution of this Lease, shall either (1) pay Landlord in cash or immediately available funds or (2) provide Landlord the Letter of Credit (defined below) as more particularly described below, in each case in the amount of the Security specified in Section 1.01 as security ("Security") for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease. If Tenant fails timely to perform any of the

terms, provisions, covenants and conditions of this Lease or any other document executed by Tenant in connection with this Lease, including, but not limited to, the payment of the Monthly Base Rent, Rent Adjustment Deposits, Rent Adjustments or the repair of damage to the Premises caused by Tenant (excluding normal wear and tear) then Landlord may use, apply, or retain the whole or any part of the Security for the payment of any such Monthly Base Rent, Rent Adjustment Deposits or Rent Adjustments not paid when due, for the cost of repairing such damage, for the cost of cleaning the Premises, for the payment of any other sum which Landlord may expend or may be required to expend by reason of Tenant' s failure to perform, and otherwise for compensation of Landlord for any other loss or damage to Landlord occasioned by Tenant' s failure to perform, including, but not limited to, any loss of future Rent and any damage or deficiency in the reletting of the Premises (whether such loss, damages or deficiency accrue before or after summary proceedings or

other reentry by Landlord) and the amount of the unpaid past Rent, future Rent loss, and all other losses, costs and damages that Landlord would be entitled to recover if Landlord were to pursue recovery under California Civil Code Section 1951.2 or 1951.4. If Landlord so uses, applies or retains all or part of the Security, Tenant shall within five (5) business days after demand pay or deliver to Landlord in immediately available funds the sum necessary to replace the amount used, applied or retained, except as specified in (e) below. If Tenant has fully and faithfully performed and observed all of Tenant's obligations under the terms, provisions, covenants and conditions of this Lease, the Security (except any amount retained for application by Landlord as provided herein) shall be returned or paid over to Tenant no later than ninety (90) days after the latest of: (i) the Termination Date; (ii) the removal of Tenant from the Premises; or (iii) the surrender of the Premises by Tenant to Landlord in accordance with this Lease. Provided, however, in no event shall any such return be construed as an admission by Landlord that Tenant has performed all of its obligations hereunder.

(b) The Security, whether in the form of cash, Letter of Credit (defined below) and/or Letter of Credit Proceeds (defined below), shall not be deemed an advance rent deposit or an advance payment of any kind, or a measure of Landlord's damages with respect to Tenant's failure to perform, nor shall any action or inaction of Landlord with respect to it or its use or application be a waiver of, or bar or defense to, enforcement of any right or remedy of Landlord. Landlord shall not be required to keep the Security separate from its general funds and shall not have any fiduciary duties or other duties (except as set forth in this Section) concerning the Security. Tenant shall not be entitled to any interest on the Security. In the event of any sale, lease or transfer of Landlord's interest in the Building Landlord shall have the right to transfer the Security, or balance thereof, to the vendee, transferee or lessee and any such transfer shall release Landlord from all liability for the return of the Security. Tenant thereafter shall look solely to such vendee, transferee or lessee for the return or payment of the Security. Tenant shall not assign or encumber or attempt to assign or encumber the Security or any interest in it and Landlord shall not be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance, and regardless of one or more assignments of this Lease, Landlord may return the Security to the original Tenant without liability to any assignee. Tenant hereby waives any and all rights of Tenant under the provisions of Section 1950.7 of the California Civil Code, and any and all rights of Tenant under all other provisions of law, now or hereafter enacted, regarding security deposits.

(c) If Tenant fails timely to perform any obligation under this Article Five, such breach shall constitute a Default by Tenant under this Lease without any right to or requirement of any further notice or cure period under any other Article of this Lease, except such notice and cure period expressly provided under this Article Five.

(d) During the first six months after the date on which this Lease has been executed by both Tenant and Landlord, Tenant shall have the right, at Tenant's sole cost and expense, to provide Landlord with the Letter of Credit (defined below) as the Security required under this Lease in substitution for the cash then held by Landlord as Security. In the event that Tenant first delivered the Security in the form of cash or immediately available funds prior to delivering the Letter of Credit, then, within thirty (30) days after Tenant's delivery to Landlord of the Letter of Credit, Landlord shall refund to Tenant the amount of cash held by Landlord as Security, less any amounts thereof used, applied or retained by Landlord pursuant to the provisions of Subsection (a) and not replenished by Tenant.

(e) As used herein "Letter of Credit" shall mean an unconditional, irrevocable sight draft letter of credit issued, presentable and payable at the San Francisco, California or San Jose, California office of a major national bank satisfactory to Landlord in its sole discretion (the "Bank"), naming Landlord as beneficiary, in an amount equal to One Hundred Fifty Thousand Nine Hundred Ninety-five and 00/100 Dollars (\$150,995.00). The Letter of Credit shall provide: (i) that Landlord may make partial and multiple draws thereunder, up to the face amount thereof, and that Landlord may draw upon the Letter of Credit up to the full amount thereof, as determined by Landlord, and the Bank will pay to Landlord the amount of such draw upon receipt by the Bank of a sight draft signed by Landlord without requirement for any additional documents or statements by Landlord; and (ii) that, in the event of assignment or other transfer of either Landlord's interest in this Lease or of any interest in Landlord (including, without limitation, consolidations, mergers, reorganizations or other entity changes), the Letter of Credit shall be freely transferable by Landlord, without charge to Landlord and without recourse, to the assignee or transferee of such interest and the Bank shall confirm the same to Landlord and such assignee or transferee. The Letter of Credit shall be in the form attached as Exhibit H hereto. Provided however, if Tenant proposes to use Silicon Valley Bank as the issuer of the Letter of Credit, the form of Letter of Credit set forth in Exhibit E hereto will be acceptable to Landlord. Landlord may (but shall not be required to) draw upon the Letter of Credit and use the proceeds therefrom (the "Letter of Credit Proceeds") or any portion thereof in any manner Landlord is permitted to use the Security under this Article Five. In the event Landlord draws upon the Letter of Credit and elects not to terminate the Lease but to use the Letter of Credit Proceeds, then within five (5) business days after Landlord gives Tenant written notice specifying the amount of the Letter of Credit Proceeds so utilized by Landlord, Tenant shall deliver to Landlord an amendment to the Letter of Credit or a replacement Letter of Credit in an amount equal to one hundred percent (100%) of the then-required amount of the Letter of Credit. Tenant's failure to deliver such amendment or replacement of the Letter of Credit to Landlord within five (5) business days after Landlord's notice shall constitute a Default by Tenant under this Lease. The Letter of Credit shall have an initial term of no longer than one (1) year, shall be "evergreen", and shall be extended, reissued or replaced by Tenant, in each case at least thirty (30) days prior to its expiration in a manner that fully complies with the requirements of this

Article Five, so that in all events the Letter of Credit required hereunder shall be in full force and effect continuously until the date (the "L/C Expiration Date") for return of the Security described in Subsection (a) above. No more often than once per year, Landlord shall have the right to require Tenant to deliver to Landlord, on 15 days prior notice, a replacement Letter of Credit on the same terms and conditions set forth in this Article Five, in the event that Landlord determines, in its good faith judgment, that the issuing Bank is no longer satisfactory to remain as the issuer of the Letter of Credit. Any advice from the issuer that it intends to withdraw or not extend the Letter of Credit prior to any scheduled annual expiration or the L/C Expiration Date shall entitle the Landlord to immediately draw upon the Letter of Credit.



ARTICLE SIX  
UTILITIES & SERVICES

6.01 LANDLORD' S GENERAL SERVICES

Landlord shall provide maintenance and services as provided in Article Eight.

6.02 TENANT TO OBTAIN & PAY DIRECTLY

(a) Tenant shall be responsible for and shall pay promptly all charges for gas, electricity, sewer, heat, light, power, telephone, refuse pickup (to be performed on a regularly scheduled basis so that accumulated refuse does not exceed the capacity of Tenant' s refuse bins), janitorial service and all other utilities, materials and services furnished directly to or used by Tenant in, on or about the Premises, together with ail taxes thereon. Tenant shall contract directly with the providing companies for such utilities and services.

(b) Notwithstanding any provision of the Lease to the contrary, without, in each instance, the prior written consent of Landlord, as more particularly provided in Article Nine, Tenant shall not: (i) make any alterations or additions to the electric or gas equipment or systems or other Building systems. Tenants use of electric current shall at no time exceed the capacity of the wiring, feeders and risers providing electric current to the Premises or the Building. The consent of Landlord to the installation of electric equipment shall not relieve Tenant from the obligation to limit usage of electricity to no more than such capacity.

6.03 TELEPHONE SERVICES

All telegraph, telephone, and communication connections which Tenant may desire outside the Premises shall be subject to Landlord' s prior written approval, in Landlord' s sole discretion, and the location of all wires and the work in connection therewith shall be performed by contractors approved by Landlord and shall be subject to the direction of Landlord, except that such approval is not required as to Tenants cabling from the Premises in a route designated by Landlord to any telephone cabinet or panel provided for Tenant' s connection to the telephone cable serving the Building, so long as Tenant' s equipment does not require connections different than or additional to those to the telephone cabinet or panel provided. As to any such connections or work outside the Premises requiring Landlord' s approval, Landlord reserves the right reasonably to approve the entity or entities providing telephone or other communication cable installation, removal, repair and maintenance outside the Premises and reasonably to restrict and control access to telephone cabinets or panels outside the Premises. Tenant shall be responsible for and shall pay all costs incurred in connection with the installation of telephone cables and communication wiring in the Premises including any hook-up, access and maintenance fees related to the installation of such wires and cables in the Premises and the commencement of service therein, and the maintenance thereafter of such wire and cables; and there shall be included in Operating Expenses for the Building all installation, removal, hook-up or maintenance costs incurred by Landlord in connection with telephone cables and communication wiring serving the Building which are not allocable to any individual users of such service but are allocable to the Building generally. If Tenant fails to maintain all telephone cables and communication wiring in the Premises and such failure affects or interferes with the operation or maintenance of any other telephone cables or communication wiring serving the Building Landlord or any vendor hired by Landlord may enter into and upon the Premises forthwith and perform such repairs restorations or alterations as Landlord deems necessary in order to eliminate any such interference (and Landlord may recover from Tenant all of Landlord' s costs in connection therewith). No later than the Termination Date, Tenant agrees to remove all telephone cables and communication wiring installed by Tenant for and during Tenant' s occupancy, which Landlord shall request Tenant to remove. Tenant agrees that neither Landlord nor any of its agents or employees shall be liable to Tenant, or any of Tenant' s employees, agents, customers or invitees or anyone claiming through, by or under Tenant, for any damages, injuries, losses, expenses, claims or causes of action because of any interruption, diminution, delay or discontinuance at any time for any reason in the furnishing of any telephone or other communication service to the Premises and the Building.

6.04 FAILURE OR INTERRUPTION OF UTILITY OR SERVICE

To the extent that any equipment or machinery furnished or maintained by Landlord outside the Premises is used in the delivery of utilities directly obtained by Tenant pursuant to Section 6.02 and breaks down or ceases to function properly. Landlord shall use reasonable diligence to repair same promptly. In the event of any failure, stoppage or interruption of, or change in, any utilities or services supplied by Landlord which are not directly obtained by Tenant, Landlord shall use reasonable diligence to have service promptly resumed. In either event covered by the preceding two sentences, if the cause of any such failure, stoppage or interruption of, or change in, utilities or services is within the control of a public utility, other public or quasi-public entity, or utility provider outside Landlord' s control notification to such utility or entity of such failure, stoppage or interruption and request to remedy the same shall constitute "reasonable diligence" by Landlord to have service promptly resumed. Notwithstanding any other provision of this Section to the contrary, in the event of any failure, stoppage or interruption of, or change in, any utility or other service furnished to the Premises or the Project resulting from any cause other than the gross negligence or willful and wrongful act of Landlord or its agents or contractors, including changes in service provider or Landlord' s compliance with any voluntary or similar governmental or business guidelines now or hereafter published or any requirements

now or hereafter established by any governmental agency, board or bureau having jurisdiction over the operation of the Property: (a) Landlord shall not be liable for, and Tenant shall not be entitled to, any abatement or reduction of Rent; (b) no such failure, stoppage, or interruption of any such utility or service shall constitute an eviction of Tenant or relieve Tenant of the obligation to perform any covenant or agreement of this Lease to be performed by Tenant; (c) Landlord shall not be in breach of this Lease nor be liable to Tenant for damages or otherwise.

6.05 INTENTIONALLY OMITTED

## 6.06 SIGNAGE

Except as set forth in Rider 2, Tenant shall not install any signage within the Project, the Building or the Premises without obtaining the prior written approval of Landlord, and Tenant shall be responsible for procurement, installation, maintenance and removal of any such signage installed by Tenant, and all costs in connection therewith. Any such signage shall comply with Landlord' s current Project signage criteria and all Laws.

## ARTICLE SEVEN POSSESSION, USE AND CONDITION OF PREMISES

### 7.01 POSSESSION AND USE OF PREMISES

(a) Tenant shall occupy and use the Premises only for the uses specified in Section 1.01(17) to conduct Tenant' s business. Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which: (1) is unlawful or in violation of any Law or Environmental Law; (2) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Building or covering its operations; (3) is contrary to or prohibited by the terms and conditions of this Lease or the rules and regulations as provided in Article Eighteen; (4) contrary to or prohibited by the articles, bylaws or rules of any owner' s association affecting the Project; (5) would obstruct or interfere with the rights of other tenants or occupants of the Building or the Project, or injure or annoy them, or would tend to create or continue a nuisance; or (6) would constitute any waste in or upon the Premises or Project.

(b) Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises, the Building and the Project depending on, among other things: (1) whether Tenant' s business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall be responsible for ADA Title III compliance in the Common Areas, except as provided below, (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease, (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by Tenant Additions in the Premises, and (d) Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost of, ADA Title III compliance in the Common Areas necessitated by the Building being deemed to be a "public accommodation" instead of a "commercial facility" as a result of Tenant' s use of the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant' s employees.

(c) Landlord and Tenant agree to cooperate and use commercially reasonable efforts to participate in traffic management programs generally applicable to businesses located in or about the area and Tenant shall encourage and support van and car pooling by, and staggered and flexible working hours for, its office workers and service employees to the extent reasonably permitted by the requirements of Tenant' s business. Neither this Section or any other provision of this Lease is intended to or shall create any rights or benefits in any other person, firm, company, governmental entity or the public.

(d) Tenant agrees to cooperate with Landlord and to comply with any and all guidelines or controls concerning energy management imposed upon Landlord by federal or state governmental organizations or by any energy conservation association to which Landlord is a party or which is applicable to the Building.

### 7.02 HAZARDOUS MATERIAL

(a) Tenant shall not use, generate, manufacture, produce, store, handle, release, discharge, or dispose of, on, under or about the Premises or any part of the Project, or transport to or from the Premises or any part of the Project, any Hazardous Material, or allow its employees, agents, contractors, licensees, invitees or any other person or entity under Tenant' s control ("Tenant Parties") to do so except to the extent expressly provided below. Provided that the Premises are used only for the uses specified in Section 1.01(17) above, Tenant shall be permitted to use and store in, and transport to and from, the Premises Hazardous Material identified on Exhibit D hereto and by this reference incorporated herein ("Permitted Hazardous Material") so long as: (i) each item of the Permitted Hazardous Material is used or stored in, or transported to and from, the Premises only to the extent necessary for Tenant' s operation of its business at the Premises; (ii) at no time shall any Permitted Hazardous Material be in use or storage at the Premises in excess of the quantity specified therefor in Exhibit D; (iii) Tenant shall not install any underground tanks of any type; and (iv) the conditions and provisions set forth in this Section 7.02 are complied with. If Tenant desires to add additional types or quantities of Hazardous Materials to the list of Permitted Hazardous Materials specified in Exhibit D, Tenant shall give Landlord notice of the Hazardous Materials and quantities thereof that Tenant desires to use at the Premises and Landlord shall thereafter have the right to approve or disapprove such additional Hazardous Materials in Landlord' s sole

discretion within ten (10) days after receipt of such notice. Failure to notify Tenant in writing of its decision within said ten (10) day period shall be deemed disapproval by Landlord. Tenant shall comply with and shall cause all Tenant Parties to comply with all Environmental Laws and other Laws pertaining to Tenant' s occupancy and use of the Premises and concerning the proper use, generation, manufacture, production, storage, handling, release, discharge, removal and disposal of any Hazardous Material introduced to the Premises, the Building or the Property by Tenant or any of the Tenant Parties. Without limiting the generality of the foregoing:

(1) Tenant shall provide Landlord promptly with copies of: (x) all permits, licenses and other governmental and regulatory approvals with respect to the use, generation, manufacture, production, storage, handling, release, discharge, removal and disposal by Tenant or any of the Tenant Parties of Hazardous Material at the Project; and (y) each hazardous material management plan or similar document ("Plan(s)") with respect

to use, generation, manufacture, production, storage, handling, release, discharge, removal or disposal of Hazardous Material by Tenant or any of the Tenant Parties necessary to comply with Environmental Laws or other Laws prepared by or on behalf of Tenant or any of the Tenant Parties (whether or not required to be submitted to a governmental agency) and updates thereof in the event of any change in the Permitted Hazardous Materials used by Tenant or when otherwise required by Law.

(2) If Tenant is notified of any investigation or violation of any Environmental Laws or other Laws arising from any activity of Tenant or any of the Tenant Parties at the Property, or if Tenant knows, or has reasonable cause to believe, that a Hazardous Material has come to be located in, on, under or about the Premises or the Project, other than as previously consented to by Landlord, Tenant shall immediately give written notice of such fact to Landlord, and provide Landlord with a copy of all reports, notices, claims or other documentation which it has concerning the presence of such Hazardous Material. In such event Landlord may conduct, at Tenant's expense, such tests and studies as Landlord deems desirable relating to compliance by Tenant or any of the Tenant Parties with this Lease, Environmental Laws, other Laws, or relating to the alleged presence of Hazardous Material introduced to the Premises, the Building or the Property by Tenant or any of the Tenant Parties. Further, Landlord may conduct, at Landlord's expense, such tests and studies as Landlord deems desirable relating to compliance by Tenant or any of the Tenant Parties with this Lease, Environmental Laws, other Laws, or relating to the alleged presence of Hazardous Material introduced to the Premises, the Building or the Property by Tenant or any of the Tenant Parties. In the event such tests and studies done at Landlord's expense reasonably indicate that Tenant or Tenant Parties have violated Environmental Laws or caused a release of Hazardous Material, then Tenant shall reimburse Landlord the cost of such tests and studies.

(3) Neither Tenant nor any of the Tenant Parties shall cause or permit any Hazardous Material to be released, discharged or disposed of in, on, under, or about the Premises or the Project (including through the plumbing or sanitary sewer system) and shall promptly, at Tenant's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises, the Project or neighboring properties, that was caused or materially contributed to by Tenant, or pertaining to or involving any Hazardous Material brought onto the Premises or the Project by Tenant or any of the Tenant Parties.

(4) Tenant shall, no later than the Termination Date, surrender the Premises to Landlord free of Hazardous Material and with all remedial and/or closure plans completed (and deliver evidence thereof to Landlord).

(b) To the extent permitted by law, Tenant hereby indemnifies and agrees to protect, defend and hold the Indemnitees harmless against all actions, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, arising from the use, generation, manufacture, production, storage, handling, release, threatened release, discharge, disposal, transportation to or from, or presence of any Hazardous Material on, under or about the Premises or any part of the Project caused by Tenant or by any of the Tenant Parties, whether before, during or after the Term. Tenant's obligations under this Section 7.02 shall survive the expiration or earlier termination of this Lease. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Landlord, in Landlord's sole discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity, subject to the prior written approval of Tenant, which may not unreasonably be withheld.

(c) The right to use and store in, and transport to and from, the Premises the Permitted Hazardous Material is personal to Genomic Health and may not be assigned or otherwise transferred by it without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion, except (i) to a Permitted Transferee which is an assignee of the Lease and which has satisfied the requirements of Sections 10.01 and 10.05 of this Lease; and (ii) Genomic Health may permit a Permitted Transferee which is a sublessee to use and store in, and transport to and from, the Premises the Permitted Hazardous Material to the same extent as Genomic Health has such right under this Lease, subject to all the provisions of this Lease. Any consent by Landlord pursuant to Article Ten to an assignment, transfer, subletting, mortgage, pledge, hypothecation or encumbrance of this Lease, and any interest therein or right or privilege appurtenant thereto, shall not constitute consent by Landlord to the use or storage at, or transportation to, the Premises of any Hazardous Material (including a Permitted Hazardous Material) by any such assignee, sublessee or transferee unless Landlord expressly agrees otherwise in writing. Provided however, at the time Tenant requests approval of any proposed assignment or sublease of this Lease by Tenant, Tenant shall submit to Landlord the proposed Permitted Hazardous Material list of the proposed assignee or sublessee. Landlord shall have the right, in its sole discretion, to approve the proposed assignee's or sublessee's proposed Permitted Hazardous Material list, or to require modifications to said list. In the event that Landlord does not approve of the proposed assignee's or sublessee's Permitted Hazardous Material list, or the proposed assignee or sublessee cannot or will not modify said list, then it shall be reasonable for purposes of Article Ten hereof for Landlord to refuse its consent to the proposed assignee or sublessee. In the event that the proposed Hazardous Material list of the assignee or sublessee includes any Hazardous Material different from or in greater quantity than those on Tenants Permitted Hazardous Material list, Tenant shall pay Landlord, whether or not Landlord consents to the proposed list of Permitted Hazardous Materials and/or to the proposed assignment or sublease, (i) a processing fee of Three Thousand Dollars (\$3,000.00) at the time Tenant submits the request for approval, and (ii) the reasonable fees and

expenses of any consultants retained by Landlord in connection with review of the proposed Permitted Hazardous Material list and use thereof by the proposed assignee or sublessee. Any consent by Landlord to the use or storage at, or transportation to or from the Premises, of any Hazardous Material (including a Permitted Hazardous Material) by an assignee, sublessee or transferee of Tenant shall not constitute a waiver of Landlord' s right to refuse such consent as to any subsequent assignee or transferee.

(d) Tenant acknowledges that the sewer piping at the Project is made of ABS plastic. Accordingly, without Landlord' s prior written consent, which may be given or withheld in Landlord' s sole discretion, only ordinary domestic sewage is permitted to be put into the drains at the Premises. UNDER NO CIRCUMSTANCES SHALL

Tenant EVER DEPOSIT ANY ESTERS OR KETONES (USUALLY FOUND IN SOLVENTS TO CLEAN UP PETROLEUM PRODUCTS) IN THE DRAINS AT THE PREMISES. If Tenant desires to put any substances other than ordinary domestic sewage into the drains, it shall first submit to Landlord a complete description of each such substance, including its chemical composition, and a sample of such substance suitable for laboratory testing. Landlord shall promptly determine whether or not the substance can be deposited into the drains and its determination shall be absolutely binding on Tenant. Upon demand, Tenant shall reimburse Landlord for expenses incurred by Landlord in making such determination. If any substances not so approved hereunder are deposited in the drains in Tenant' s Premises, Tenant shall be liable to Landlord for all damages resulting therefrom, including but not limited to all costs and expenses incurred by Landlord in repairing or replacing the piping so damaged.

### 7.03 LANDLORD ACCESS TO PREMISES; APPROVALS

(a) Tenant shall permit Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises, so long as Tenant' s use, layout or design of the Premises is not materially affected or altered. Landlord or Landlord' s agents shall have the right to enter upon the Premises (i) in the event of an emergency, without prior notice, or (ii) with 24-hour prior notice to inspect the Premises, to perform janitorial and other services (if any), to conduct safety and other testing in the Premises and to make such repairs, alterations, improvements or additions to the Premises or the Building or other parts of the Property as Landlord may deem necessary or desirable (including all alterations, improvements and additions in connection with a change in service provider or providers). Janitorial and cleaning services (if any) shall be performed after normal business hours. Any entry or work by Landlord may be during normal business hours and Landlord may use reasonable efforts to ensure that any entry or work shall not materially interfere with Tenant' s occupancy of the Premises.

(b) If Tenant or its agents shall not be personally present to permit an entry into the Premises when for any reason an entry therein shall be necessary or permissible, Landlord (or Landlord' s agents), after having properly notified Tenant (unless Landlord believes an emergency situation exists), may enter the Premises without rendering Landlord or its agents liable therefor, and without relieving Tenant of any obligations under this Lease.

(c) Landlord may enter the Premises for the purpose of conducting such inspections, tests and studies as Landlord may deem desirable or necessary to confirm Tenant' s compliance with all Laws and Environmental Laws or for other purposes necessary in Landlord' s reasonable judgment to ensure the sound condition of the Property and the systems serving the Property. Landlord' s rights under this Section 7.03 (c) are for Landlord' s own protection only, and Landlord has not, and shall not be deemed to have assumed, any responsibility to Tenant or any other party as a result of the exercise or non-exercise of such rights, for compliance with Laws or Environmental Laws or for the accuracy or sufficiency of any item or the quality or suitability of any item for its intended use.

(d) Landlord may do any of the foregoing, or undertake any of the inspection or work described in the preceding paragraphs without such action constituting an actual or constructive eviction of Tenant, in whole or in part, or giving rise to an abatement of Rent by reason of loss or interruption of business of the Tenant, or otherwise.

(e) The review, approval or consent of Landlord with respect to any item required or permitted under this Lease is for Landlord' s own protection only, and Landlord has not, and shall not be deemed to have assumed, any responsibility to Tenant or any other party, as a result of the exercise or non-exercise of such rights, for compliance with Laws or Environmental Laws or for the accuracy or sufficiency of any item or the quality or suitability of any item for its intended use.

### 7.04 QUIET ENJOYMENT

Landlord covenants, in lieu of any implied covenant of quiet possession or quiet enjoyment, that so long as Tenant is in compliance with the covenants and conditions set forth in this Lease, Tenant shall have the right to quiet enjoyment of the Premises without hindrance or interference from Landlord or those claiming through Landlord, and subject to the covenants and conditions set forth in the Lease and to the rights of any Mortgagee or ground lessor.

## ARTICLE EIGHT MAINTENANCE & HVAC

### 8.01 LANDLORD' S MAINTENANCE

Subject to Article Fourteen and Section 8.02, Landlord shall maintain the structural portions of the Building, the roof, exterior walls and exterior doors, foundation, and underslab standard sewer system of the Building in good, clean and safe condition. Notwithstanding the foregoing, Landlord shall have no responsibility to perform preventive maintenance or service for, or to repair any heating, ventilation and air conditioning equipment and systems serving the Premises ("HVAC"), and all such preventive maintenance, service, and repairs shall be performed by Tenant pursuant to the terms of Section 8.02. Landlord shall also



(a) maintain the landscaping, parking facilities and other Common Areas of the Project, and (b) wash the outside of exterior windows at intervals determined by Landlord. Except as provided in Article Fourteen and Article Fifteen, there shall be no abatement of rent, no allowance to Tenant for diminution of rental value and no liability of Landlord by reason of inconvenience, annoyance or any injury to or interference with Tenant' s business arising from the making of or the failure to make any repairs, alterations or improvements in or to any portion of the Project or in or to any fixtures, appurtenances or equipment therein. Tenant waives the right to make repairs at Landlord' s expense under any law, statute or ordinance now or hereafter in effect.

#### 8.02 TENANT' S MAINTENANCE

(a) Subject to the provisions of Article Fourteen, Tenant shall, at Tenant' s sole cost and expense, maintain and make all repairs to the Premises and fixtures therein which Landlord is not required to make pursuant to Section 8.01, including repairs to the interior walls, ceilings and windows of the Premises, the interior doors, Tenants signage, and the electrical, life-safety, plumbing and HVAC, and shall maintain the Premises, the fixtures,

HVAC and utilities systems therein, and the area immediately surrounding the Premises (including all garbage enclosures), in a good, clean and safe condition. Tenant shall deliver to Landlord a copy of any maintenance contract entered into by Tenant with respect to the Premises. Tenant shall also, at Tenant's expense, keep any non-standard heating, ventilating and air conditioning equipment and other non-standard equipment in the Building in good condition and repair, using contractors approved in advance, in writing, by Landlord, which approval shall not be unreasonably withheld. Notwithstanding Section 8.01 above, to the extent that Landlord is not reimbursed by insurance and no waiver set forth in Section 16.04 is applicable, Tenant will pay for any repairs to the Building or the Project which are caused by any negligence or willful and wrongful act, of Tenant or its assignees, subtenants or employees, or of the respective agents of any of the foregoing persons, or of any other persons permitted in the Building or elsewhere in the Project by Tenant or any of them. Tenant will maintain the Premises, and will leave the Premises upon termination of this Lease, in a safe, clean, neat and sanitary condition.

(b) With respect to HVAC, Tenant, at Tenant's sole cost and expense, shall enter into contracts ("HVAC Service Contracts") for regularly scheduled inspections and preventive maintenance and service, as to which the contractors, scope of work, frequency of inspection, maintenance or service, shall be subject to Landlord's prior written approval, in its sole discretion. Tenant shall cause the contractor for such HVAC Service Contracts to deliver written reports to Landlord within ten (10) days after the date of such inspection, maintenance and/or service. Tenant shall deliver to Landlord a copy of the initial HVAC Service Contracts within sixty (60) days after the Commencement Date and of subsequent HVAC Service Contracts entered into by Tenant within ten (10) days after execution thereof (which subsequent HVAC Service Contracts shall be subject to the same approval standards and requirements as set forth above with respect to the initial contract). In the event Tenant fails, in the reasonable judgment of Landlord, to meet the requirements for such HVAC Service Contracts and cause such inspections, maintenance and service to be performed, which failure continues at the end of fifteen (15) days following written notice given by Landlord stating the nature of the failure, Landlord shall have the right (but shall not be obligated) to obtain such HVAC Service Contracts and to enter the Premises and perform such inspection, maintenance and service, at Tenant's sole cost and expense; provided, however, if the nature of the maintenance or repair is such that it cannot, with the exercise of reasonable diligence, be completed within fifteen (15) days of Tenant's receipt of Landlord's notice, Landlord shall not undertake such inspection, maintenance and service at Tenant's expense provided Tenant commences such inspection, maintenance and service in the manner required above within said 15-day period and thereafter diligently and continuously prosecutes the same to completion and provided further, however, that in the event of an emergency condition, Landlord shall have the right to make such inspection, maintenance, service and/or repairs on behalf of Tenant at Tenant's sole cost and expense after giving Tenant such notice, if any, as is reasonable under the circumstances. Landlord's right of entry pursuant to Section 7.03 shall include the right to enter and inspect the Premises for violations of Tenant's covenants herein. Tenant shall maintain written records of HVAC inspection, maintenance, service repairs, and shall use certified technicians approved in writing by Landlord to perform such maintenance and repairs.

## ARTICLE NINE ALTERATIONS AND IMPROVEMENTS

### 9.01 TENANT ALTERATIONS

(a) The following provisions shall apply to the completion of any Tenant Alterations:

(1) Tenant shall not, except as provided herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, make or cause to be made any Tenant Alterations in or to the Premises or any Property systems serving the Premises. Prior to making any Tenant Alterations, Tenant shall give Landlord ten (10) days prior written notice (or such earlier notice as would be necessary pursuant to applicable Law) to permit Landlord sufficient time to post appropriate notices of non-responsibility. Subject to all other requirements of this Article Nine, Tenant may, without Landlord's prior written consent, undertake (i) Decoration work and/or (ii) any Alterations that (x) do not adversely affect the roof, structural portions or the systems or equipment of the Building, (y) are not visible from the exterior of the Building, and (z) do not cost, in the aggregate, over the Term of the Lease, in excess of \$50,000. Tenant shall furnish Landlord with the names and addresses of all contractors and subcontractors and copies of all contracts. All Tenant Alterations shall be completed at such time and in such manner as Landlord may from time to time designate, and only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld. The contractors, mechanics and engineers who may be used are further limited to those whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. Landlord may further condition its consent upon Tenant furnishing to Landlord and Landlord approving prior to the commencement of any work or delivery of materials to the Premises related to the Tenant Alterations such of the following as specified by Landlord: architectural plans and specifications, opinions from Landlord's engineers stating that the Tenant Alterations will not in any way adversely affect the Building's systems, necessary permits and licenses, certificates of insurance, and such other documents in such form reasonably requested by Landlord. Landlord may, in the exercise of reasonable judgment, request that Tenant provide

Landlord with appropriate evidence of Tenant's ability to complete and pay for the completion of the Tenant Alterations such as a performance bond or letter of credit. Upon completion of the Tenant Alterations, Tenant shall deliver to Landlord an as-built mylar and digitized (if available) set of plans and specifications for the Tenant Alterations.

(2) Tenant shall pay the cost of all Tenant Alterations and the cost of decorating the Premises and any work to the Property occasioned thereby. In connection with completion of any Tenant Alterations, Tenant shall, upon receipt of Landlord's itemized invoice therefor, pay Landlord's actual and reasonable costs to review the plans and specifications for such Tenant Alterations and to monitor the performance thereof, including a construction administration fee and all elevator and hoisting charges at Landlord's then standard rate. Upon completion of Tenant Alterations, Tenant shall furnish Landlord with contractors' affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and

used in connection therewith and such other documentation reasonably requested by Landlord or Mortgagee.

(3) Tenant agrees to complete all Tenant Alterations (i) in accordance with all Laws, Environmental Laws, all requirements of applicable insurance companies and in accordance with Landlord's standard construction rules and regulations, and (ii) in a good and workmanlike manner with the use of good grades of materials. Tenant shall notify Landlord immediately if Tenant receives any notice of violation of any Law in connection with completion of any Tenant Alterations and shall immediately take such steps as are necessary to remedy such violation. In no event shall such supervision or right to supervise by Landlord nor shall any approvals given by Landlord under this Lease constitute any warranty by Landlord to Tenant of the adequacy of the design, workmanship or quality of such work or materials for Tenants intended use or of compliance with the requirements of Section 9.01(a)(3)(i) and (ii) above or impose any liability upon Landlord in connection with the performance of such work.

(b) All Tenant Additions to the Premises whether installed by Landlord or Tenant, shall without compensation or credit to Tenant, become part of the Premises and the property of Landlord at the time of their installation and shall remain in the Premises, unless pursuant to Article Twelve, Tenant may remove them or is required to remove them at Landlord's request. Tenant's Personal Property, as set forth in Exhibit G, shall at all times remain the property of Tenant and Tenant shall remove such property at the expiration or earlier termination of this Lease.

## 9.02 LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any other part of the Property arising out of work performed, or alleged to have been performed by, or at the direction of, or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant shall within ten (10) days of receiving notice of such lien or claim (a) have such lien or claim for lien released of record or (b) deliver to Landlord a bond in form, content, amount, and issued by surety, satisfactory to Landlord, indemnifying, protecting, defending and holding harmless the Indemnitees against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to take any of the above actions, Landlord, in addition to its rights and remedies under Article Eleven, without investigating the validity of such lien or claim for lien, may pay or discharge the same and Tenant shall, as payment of additional Rent hereunder, reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and reasonable attorneys' fees.

## ARTICLE TEN ASSIGNMENT AND SUBLETTING

### 10.01 ASSIGNMENT AND SUBLETTING

(a) Without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, Tenant may not sublease, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or the encumbering of Tenant's interest therein in whole or in part, by operation of Law or otherwise or permit the use or occupancy of the Premises, or any part thereof, by anyone other than Tenant, provided, however, if Landlord chooses not to recapture the space proposed to be subleased or assigned as provided in Section 10.02, Landlord shall not unreasonably withhold its consent to a subletting or assignment under this Section 10.01. Tenant agrees that the provisions governing sublease and assignment set forth in this Article Ten shall be deemed to be reasonable. If Tenant desires to enter into any sublease of the Premises or assignment of this Lease, Tenant shall deliver written notice thereof to Landlord ("Tenant's Notice"), together with the identity of the proposed subtenant or assignee and the proposed principal terms thereof and financial and other information sufficient for Landlord to make an informed judgment with respect to such proposed subtenant or assignee at least sixty (60) days prior to the commencement date of the term of the proposed sublease or assignment. If Tenant proposes to sublease less than all of the Rentable Area of the Premises, the space proposed to be sublet and the space retained by Tenant must each be a marketable unit as reasonably determined by Landlord and otherwise in compliance with all Laws; provided however, so long as the Tenant is Genomic Health or a Permitted Transferee which is an assignee of the Lease which has satisfied the requirements of Sections 10.01 and 10.05 below, the foregoing shall not apply to a sublease for a sublease term of a year or less, for undemised space in the aggregate (for one or more such subleases in effect at any one time) up to 3,000 square feet of Rentable Area. Landlord shall notify Tenant in writing of its approval or disapproval of the proposed sublease or assignment or its decision to exercise its rights under Section 10.02 within thirty (30) days after receipt of Tenant's Notice (and all required information). In no event may Tenant sublease any portion of the Premises or assign the Lease to any other tenant of the Project. Tenant shall submit for Landlord's approval (which approval shall not be unreasonably withheld) any advertising which Tenant or its agents intend to use with respect to the space proposed to be sublet.

(b) With respect to Landlord's consent to an assignment or sublease, Landlord may take into consideration any factors which Landlord may deem relevant, and the reasons for which Landlord's denial shall be deemed to be reasonable shall include, without limitation, the following:

- (i) the business reputation or creditworthiness of any proposed subtenant or assignee is not acceptable to Landlord; or
- (ii) in Landlord' s reasonable judgment the proposed assignee or subtenant would diminish the value or reputation of the Building or Landlord; or
- (iii) any proposed assignee' s or subtenant' s use of the Premises would violate Section 7.01 of the Lease or would violate the provisions of any other leases of tenants in the Project;

(iv) the proposed assignee or subtenant is either a governmental agency, a school or similar operation, or a medical related practice; or

(v) the proposed subtenant or assignee is a bona fide prospective tenant of Landlord in the Project as demonstrated by a written proposal dated within ninety (90) days prior to the date of Tenant' s request; or

(vi) the proposed subtenant or assignee would materially increase the estimated pedestrian and vehicular traffic to and from the Premises and the Building.

In no event shall Landlord be obligated to consider a consent to any proposed assignment of the Lease which would assign less than the entire Premises. In the event Landlord wrongfully withholds its consent to any proposed sublease of the Premises or assignment of the Lease, Tenant' s sole and exclusive remedy therefor shall be to seek specific performance of Landlord' s obligations to consent to such sublease or assignment.

(c) Any sublease or assignment shall be expressly subject to the terms and conditions of this Lease. Any subtenant or assignee shall execute such documents as Landlord may reasonably require to evidence such subtenant or assignee' s assumption of the obligations and liabilities of Tenant under this Lease. Tenant shall deliver to Landlord a copy of all agreements executed by Tenant and the proposed subtenant and assignee with respect to the Premises. Landlord' s approval of a sublease, assignment, hypothecation, transfer or third party use or occupancy shall not constitute a waiver of Tenant' s obligation to obtain Landlord' s consent to further assignments or subleases, hypothecations, transfers or third party use or occupancy.

(d) For purposes of this Article Ten, an assignment shall be deemed to include a change in the majority control of Tenant, resulting from any transfer, sale or assignment of shares of stock or membership interests of Tenant occurring by operation of Law or otherwise, and includes any merger, acquisition, consolidation or reorganization, except as otherwise provided in this Subsection below. Notwithstanding any provision of this Section to the contrary, an assignment for purposes of this Article does not include any transfer of control of the stock or membership interests of Tenant through (i) any public offering of shares of stock in Tenant in accordance with applicable State and Federal law, rules, regulations and orders if thereafter the stock shall be listed and publicly traded through the New York Stock Exchange or the NASDAQ national market; or (ii) public sale of such stock effected through such Exchange or the NASDAQ national market. If Tenant is a partnership, any change in the partners of Tenant shall be deemed to be an assignment.

(e) For purposes of this Lease, a "Permitted Transferee" shall mean any Person which: (i) is an Affiliate of Tenant; or (ii) is the corporation or other entity (the "Successor") resulting from a merger, conversion, consolidation or non-bankruptcy reorganization with Tenant; or (iii) is not a Successor but is otherwise a deemed assignee due to a change of control under section 10.01(d) above; or (iv) purchases, leases or acquires by way of exchange all or substantially all the assets of Tenant as a going concern (the "Purchaser"). Notwithstanding anything to the contrary in Sections 10.01(a) and (b), 10.02 and 10.03, provided there is no uncured Default under this Lease, Tenant shall have the right, without the prior written consent of Landlord, to assign this Lease to a Permitted Transferee or to sublease the Premises or any part thereof to a Permitted Transferee provided that: (1) Landlord receives thirty (30) days prior written notice of an assignment or sublease (including a pending transaction described in subparts (i), (ii), (iii) or (iv) of this Section 10.01(e)); provided that Tenant may give notice in less than thirty (30) days in connection with a pending transaction described in subparts (ii) and (iv) of this Section 10.01(e) to the extent that Tenant is precluded, by the terms of the transaction or, if Tenant' s stock is publicly traded, by applicable securities' laws, from making disclosure of the transaction itself; (2) with respect to an assignment of the Lease or a sublease of more than half the Premises to an entity described in subparts (ii) or (iv) of this Section 10.01(e), the Permitted Transferee' s net worth is not less than Tenant' s net worth (measured as of the most recent date for which financial statements prepared in accordance with GAAP are available); (3) with respect to an assignment of the Lease or a sublease of more than half the Premises to an entity described in subparts (i) or (iii) of this Section 10.01(e), Tenant (as the assignor or sublandlord) continues in existence with a net worth not less than Tenant' s net worth immediately prior to such assignment or subletting; (4) the Permitted Transferee expressly assumes (except a Permitted Transferee which is a deemed assignee under subpart (iii) of this Section 10.01(e) or which is a sublessee in the event of a sublease under this Section 10.01(e)) in writing reasonably satisfactory to Landlord all of the obligations of Tenant under this Lease and delivers such assumption to Landlord no later than fifteen (15) days (or such lesser time as is appropriate in connection with a pending transaction described in subparts (ii) and (iv) of this Section 10.01(e) to the extent that Tenant is precluded, by the terms of the transaction or, if Tenant' s stock is publicly traded, by applicable securities' laws, from making disclosure of the transaction itself) prior to the effective date of the assignment; (5) Landlord receives no later than five (5) days before the effective date a fully executed copy of the applicable assignment or sublease agreement between Tenant and the Permitted Transferee; and (6) promptly after Landlord' s written request, Tenant and the Permitted Transferee provide such reasonable documents and information which Landlord reasonably requests for the purpose of substantiating whether or not the assignment or sublease is to a Permitted Transferee. All determinations of net worth for purposes of this Subsection shall exclude any value attributable to goodwill or going concern value. With respect to any proposed assignment under subparts (ii) or (iv) of this Section 10.01(e), Tenant shall pay Landlord, no later than fifteen (15) days prior to the effective date of such proposed

assignment or sublease, a processing fee of Three Thousand Dollars (\$3,000,00), which shall be Landlord' s earned fee whether or not the proposed assignment or sublease is completed by Tenant.

(f) With respect to any sublease to a Permitted Transferee pursuant to Subsection (e) above, Tenant hereby irrevocably assigns to Landlord, effective upon any such sublease, all rent and other payments due from subtenant under the sublease, provided however, that Tenant shall have a license to collect such rent and other payments until the occurrence of a default by Tenant under any of the provisions of the Lease, and notice to Tenant of such default shall not be a prerequisite to Landlord' s right to collect subrent. At any time at Landlord' s option, Landlord shall have the right to give notice to the subtenant of such assignment. Landlord shall credit Tenant with any rent received by Landlord under such assignment but the acceptance of any payment on account of rent from the subtenant as the result of any such default shall in no manner whatsoever serve to release Tenant from any liability under the terms, covenants, conditions, provisions or agreement under



the Lease. No such payment of rent or any other payment by the subtenant directly to Landlord and/or acceptance of such payment(s) by Landlord, regardless of the circumstances or reasons therefor, shall in any manner whatsoever be deemed an attornment by the subtenant to Landlord in the absence of a specific written agreement signed by Landlord to such an effect. For purposes of this Subsection, any use or occupancy by a Permitted Transferee (unless it is an assignee) without a formal sublease shall for the purposes of this Subsection be deemed to be a sublease at the same rental rate as provided in the Lease.

#### 10.02 RECAPTURE

Landlord shall have the option to exclude from the Premises covered by this Lease (“recapture”), the space proposed to be sublet or subject to the assignment, so long as (i) the proposed transfer is not to a Permitted Transferee in accordance with the provisions of Section 10.01(e), and (ii) the proposed sublease is for the remainder of the term of this Lease and Landlord recaptures the entire portion of the Premises subject to the proposed sublease. If Landlord elects to recapture, such recapture shall be effective as of the commencement date of such sublease or assignment, Tenant shall surrender possession of the space proposed to be subleased or subject to the assignment to Landlord on the effective date of recapture of such space from the Premises, such date being the Termination Date for such space. Effective as of the date of recapture of any portion of the Premises pursuant to this section, the Monthly Base Rent, Rentable Area of the Premises and Tenant’s Share shall be adjusted accordingly.

#### 10.03 EXCESS RENT

Except with respect to an assignment or sublease to a Permitted Transferee in accordance with the provisions of Section 10.01(e), Tenant shall pay Landlord on the first day of each month during the term of the sublease or assignment, fifty percent (50%) of the amount by which the sum of all rent and other consideration (direct or indirect) due from the subtenant or assignee for such month exceeds: (i) that portion of the Monthly Base Rent and Rent Adjustments due under this Lease for said month which is allocable to the space sublet or assigned; and (ii) the following costs and expenses for the subletting or assignment of such space: (1) brokerage commissions and reasonable attorneys’ fees and expenses, (2) the actual costs paid in making any improvements or substitutions in the Premises required by any sublease or assignment; and (3) “free rent” periods, costs of any inducements or concessions given to subtenant or assignee, moving costs, and other amounts in respect of such subtenant’s or assignee’s other leases or occupancy arrangements. All such costs and expenses shall be amortized over the term of the sublease or assignment pursuant to sound accounting principles.

#### 10.04 TENANT LIABILITY

In the event of any sublease or assignment, whether or not with Landlord’s consent, Tenant shall not be released or discharged from any liability, whether past, present or future, under this Lease, including any liability arising from the exercise of any renewal or expansion option, to the extent such exercise is expressly permitted by Landlord. Tenant’s liability shall remain primary, and in the event of default by any subtenant, assignee or successor of Tenant in performance or observance of any of the covenants or conditions of this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said subtenant, assignee or successor. After any assignment, Landlord may consent to subsequent assignments or subletting of this Lease, or amendments or modifications of 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 or any successor of Tenant of liability under this Lease. If Landlord grants consent to such sublease or assignment, Tenant shall pay all reasonable attorneys’ fees and expenses incurred by Landlord with respect to such assignment or sublease. In addition, if Tenant has any options to extend the term of this Lease or to add other space to the Premises, such options shall not be available to any subtenant or assignee, directly or indirectly without Landlord’s express written consent, which may be withheld in Landlord’s sole discretion.

#### 10.05 ASSUMPTION AND ATTORNMENT

If Tenant shall assign this Lease as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to Landlord and furnished to Landlord not later than fifteen (15) days prior to the effective date of the assignment. If Tenant shall sublease the Premises as permitted herein, Tenant shall, at Landlord’s option, within fifteen (15) days following any request by Landlord, obtain and furnish to Landlord the written agreement of such subtenant to the effect that the subtenant will attorn to Landlord and will pay all subrent directly to Landlord.

### ARTICLE ELEVEN DEFAULT AND REMEDIES

#### 11.01 EVENTS OF DEFAULT

The occurrence or existence of any one or more of the following shall constitute a material default and breach of the Lease (a "Default") by Tenant under this Lease:

(i) Tenant fails to pay any installment or other payment of Rent, including Rent Adjustment Deposits or Rent Adjustments, within three business (3) days after written notice to Tenant of such failure to pay, provided that after Landlord has twice sent such notice to Tenant for failure to pay, thereafter such failure shall be a Default if Tenant fails to pay any such installment or other payment of Rent, including Rent Adjustment Deposits or Rent Adjustments, within three (3) business days after the date when the same are due;

(ii) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease or the Workletter and, unless the default involves a hazardous condition, which shall be cured forthwith or unless the failure to perform is a Default for which this Lease specifies there is no cure or grace

period, fails to cure such default within thirty (30) days after written notice thereof to Tenant, provided that, if Tenant has exercised reasonable diligence to cure such failure and such failure cannot reasonably be cured within such thirty (30) day period despite reasonable diligence, Tenant shall not be in default under this subsection so long as Tenant diligently and continuously prosecutes the cure to completion;

(iii) the interest of Tenant in this Lease is levied upon under execution or other legal process;

(iv) a petition is filed by or against Tenant to declare Tenant bankrupt or seeking a plan of reorganization or arrangement under any Chapter of the Bankruptcy Act, or any amendment, replacement or substitution therefor, or to delay payment of, reduce or modify Tenant's debts, which in the case of an involuntary action is not discharged within thirty (30) days;

(v) Tenant is declared insolvent by Law or any assignment of Tenant's property is made for the benefit of creditors;

(vi) a receiver is appointed for Tenant or Tenant's property, which appointment is not discharged within thirty (30) days;

(vii) any action taken by or against Tenant to reorganize or modify Tenant's capital structure in a materially adverse way which in the case of an involuntary action is not discharged within thirty (30) days; or

(viii) upon the dissolution of Tenant.

## 11.02 LANDLORD'S REMEDIES

(a) A Default shall constitute a breach of the Lease for which Landlord shall have the rights and remedies set forth in this Section 11.02 and all other rights and remedies set forth in this Lease or now or hereafter allowed by Law, whether legal or equitable, and all rights and remedies of Landlord shall be cumulative and none shall exclude any other right or remedy.

(b) With respect to a Default, at any time Landlord may terminate Tenant's right to possession by written notice to Tenant stating such election. Upon the termination of Tenant's right to possession pursuant to this Section 11.02, Tenant's right to possession shall terminate and this Lease shall terminate, and Tenant shall remain liable as hereinafter provided. Upon such termination, Landlord shall have the right, subject to applicable Law, to re-enter the Premises and dispossess Tenant and the legal representatives of Tenant and all other occupants of the Premises by unlawful detainer or other summary proceedings, or otherwise as permitted by Law, regain possession of the Premises and remove their property (including their trade fixtures, personal property and those Tenant Additions which Tenant is required or permitted to remove under Article Twelve), but Landlord shall not be obligated to effect such removal, and such property may, at Landlord's option, be stored elsewhere, sold or otherwise dealt with as permitted by Law, at the risk of, expense of and for the account of Tenant, and the proceeds of any sale shall be applied pursuant to Law. Landlord shall in no event be responsible for the value, preservation or safekeeping of any such property. Tenant hereby waives all claims for damages that may be caused by Landlord's removing or storing Tenant's personal property pursuant to this Section or Section 12.01, and Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claims, demands, actions, expenses, liability and cost (including reasonable attorneys' fees and expenses) arising out of or in any way related to such removal or storage. Upon such written termination of Tenant's right to possession and this Lease, Landlord shall have the right to recover damages for Tenants Default as provided herein or by Law, including the following damages provided by California Civil Code Section 1951.2:

(1) the worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(2) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could reasonably have been avoided;

(3) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term of this Lease after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; and

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. The word "rent" as used in this Section 11.02 shall have the same meaning as the defined term Rent in this Lease. The "worth at the time of award" of the amount referred to in clauses (1) and (2) above is computed by allowing interest at the Default Rate. The worth at the time of award of the amount referred to in clause (3) above 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%). For the purpose of determining unpaid Rent under clause (3) above, the monthly Rent reserved in this Lease shall be deemed to be the sum of the Monthly Base Rent, and monthly Storage Space Rent, if any, and the amounts last payable by Tenant as Rent Adjustments for the calendar year in which Landlord terminated this Lease as provided hereinabove.

(c) Even if Tenant is in Default and/or has abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession by written notice as provided in Section 11.02(b) above, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. In such event, Landlord shall have all of the rights and remedies of a landlord under California Civil Code Section 1951.4 (lessor

may continue Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to

reasonable limitations), or any successor statute. During such time as Tenant is in Default, if Landlord has not terminated this Lease by written notice and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises, subject to Landlord's option to recapture pursuant to Section 10.02, Landlord shall not unreasonably withhold its consent to such assignment or sublease. Tenant acknowledges and agrees that the provisions of Article Ten shall be deemed to constitute reasonable limitations of Tenant's right to assign or sublet. Tenant acknowledges and agrees that in the absence of written notice pursuant to Section 11.02(b) above terminating Tenant's right to possession, no other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, including acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease or the withholding of consent to a subletting or assignment, or terminating a subletting or assignment, if in accordance with other provisions of this Lease.

(d) In the event that Landlord seeks an injunction with respect to a breach or threatened breach by Tenant of any of the covenants, conditions or provisions of this Lease, Tenant agrees to pay the premium for any bond required in connection with such injunction.

(e) Tenant hereby waives any and all rights to relief from forfeiture, redemption or reinstatement granted by Law (including California Civil Code of Procedure Sections 1174 and 1179) in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of Tenant's Default or otherwise;

(f) When this Lease requires giving or service of a notice of Default or of a failure of Tenant to observe or perform any covenant, condition or provision of this Lease which will constitute a Default unless Tenant so observes or performs within any applicable cure period, and so long as the notice given or served provides Tenant the longer of any applicable cure period required by this Lease or by statute, then the giving of any equivalent or similar statutory notice, including any equivalent or similar notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute, shall replace and suffice as any notice required under this Lease. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Article Twenty-four shall replace and satisfy the statutory service-of-notice procedures, except that any notice of unlawful detainer required by California Code of Civil Procedure Section 1161 or any similar or successor statute shall be served as required by Code of Civil Procedure Section 1162 or any similar or successor statute, and for purposes of Code of Civil Procedure Section 1162 or any similar or successor statute, Tenant's "place of residence" and "usual place of business" shall mean the address specified by Tenant for notice pursuant to Section 1.01 of this Lease, as changed by Tenant pursuant to Article Twenty-four of this Lease.

(g) The voluntary or other surrender or termination of this Lease, or a mutual termination or cancellation thereof, shall not work a merger and shall terminate all or any existing assignments, subleases, subtenancies or occupancies permitted by Tenant, except if and as otherwise specified in writing by Landlord.

(h) No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant, and no exercise by Landlord of its rights pursuant to Section 26.15 to perform any duty which Tenant fails timely to perform, shall impair any right or remedy or be construed as a waiver. No provision of this Lease shall be deemed waived by Landlord unless such waiver is in a writing signed by Landlord. The waiver by Landlord of any breach of any provision of this Lease shall not be deemed a waiver of any subsequent breach of the same or any other provision of this Lease.

#### 11.03 ATTORNEY'S FEES

In the event any party brings any suit or other proceeding with respect to the subject matter or enforcement of this Lease, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, expenses and costs of investigation as actually incurred, including court costs, expert witness fees, costs and expenses of investigation, and all reasonable attorneys' fees, costs and expenses in any such suit or proceeding (including in any action or participation in or in connection with any case or proceeding under the Bankruptcy Code, 11 United States Code Sections 101 et seq. or any successor statutes, in establishing or enforcing the right to indemnification, in appellate proceedings, or in connection with the enforcement or collection of any judgment obtained in any such suit or proceeding).

#### 11.04 BANKRUPTCY

The following provisions shall apply in the event of the bankruptcy or insolvency of Tenant:

(a) In connection with any proceeding under Chapter 7 of the Bankruptcy Code where the trustee of Tenant elects to assume this Lease for the purposes of assigning it, such election or assignment, may only be made upon compliance with the provisions of (b) and (c) below, which conditions Landlord and Tenant acknowledge to be commercially reasonable. In the event the trustee elects to reject this Lease then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.

(b) Any election to assume this Lease under Chapter 11 or 13 of the Bankruptcy Code by Tenant as debtor-in-possession or by Tenant's trustee (the "Electing Party") must provide for:

The Electing Party to cure or provide to Landlord adequate assurance that it will cure all monetary defaults under this Lease within fifteen (15) days from the date of assumption and it will cure all nonmonetary defaults under this Lease within thirty (30) days from the date of assumption. Landlord and Tenant acknowledge such condition to be commercially reasonable.

(c) If the Electing Party has assumed this Lease or elects to assign Tenant' s interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance (as herein defined), of all of the obligations imposed on Tenant under this Lease.

For the purposes hereof, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

(i) The assignee has submitted a current financial statement, certified by its chief financial officer, which shows a net worth and working capital in amounts sufficient to assure the future performance by the assignee of Tenant' s obligations under this Lease; and

(ii) Landlord has obtained consents or waivers from any third parties which may be required under a lease, mortgage, financing arrangement, or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

(d) Landlord' s acceptance of rent or any other payment from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived, or waive, the requirement of Landlord' s consent, Landlord' s right to terminate this Lease for any transfer of Tenant' s interest under this Lease without such consent, or Landlord' s claim for any amount of Rent due from Tenant.

#### 11.05 LANDLORD' S DEFAULT

Landlord shall be in default hereunder in the event Landlord has not begun and pursued with reasonable diligence the cure of any failure of Landlord to meet its obligations hereunder within thirty (30) days after the receipt by Landlord of written notice from Tenant of the alleged failure to perform. In no event shall Tenant have the right to terminate or rescind this Lease as a result of Landlord' s default as to any covenant or agreement contained in this Lease. Tenant hereby waives such remedies of termination and rescission and hereby agrees that Tenant' s remedies for default hereunder and for breach of any promise or inducement shall be limited to a suit for damages and/or injunction. In addition, Tenant hereby covenants that, prior to the exercise of any such remedies, it will give Mortgagee notice and a reasonable time to cure any default by Landlord.

### ARTICLE TWELVE SURRENDER OF PREMISES

#### 12.01 IN GENERAL

Upon the Termination Date, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a clean, good and tenantable condition, ordinary wear and tear, and damage caused by Landlord excepted. Tenant shall deliver to Landlord all keys to the Premises. Tenant shall remove from the Premises all movable personal property of Tenant and Tenant' s trade fixtures, including, subject to Section 6.04, cabling for any of the foregoing. Tenant shall be entitled to remove such Tenant Additions which at the time of their installation Landlord and Tenant agreed may be removed by Tenant. Tenant shall also remove such other Tenant Additions as required by Landlord, including any Tenant Additions containing Hazardous Material. Tenant immediately shall repair all damage resulting from removal of any of Tenant' s property, furnishings, Tenant' s Personal Property or Tenant Additions, shall close all floor, ceiling and roof openings and shall restore the Premises to a tenantable condition as reasonably determined by Landlord. If any of the Tenant Additions which were installed by Tenant involved the lowering of ceilings, raising of floors or the installation of specialized wall or floor coverings or lights, then Tenant shall also be obligated to return such surfaces to their condition prior to the commencement of this Lease. Tenant shall also be required to close any staircases or other openings between floors. Notwithstanding any of the foregoing to the contrary, if so requested by Tenant in writing (and prominently in all capital and bold lettering which also states that such request is pursuant to Section 12.01 of the Lease) at the time Tenant requests approval of any Tenant Work or subsequent Tenant Alterations, Landlord shall advise Tenant at the time of Landlord' s approval of such Tenant Work or Tenant Alterations as to whether Landlord will require that such Tenant Work or Tenant Alterations be removed by Tenant from the Premises; provided, however, regardless of the foregoing, in any event, Landlord may require removal of any Tenant Additions containing Hazardous Material and all Tenant' s trade fixtures, and, subject to Section 6.03, cabling and wiring installed for Tenant' s personal property or trade fixtures. In the event possession of the Premises is not delivered to Landlord when required hereunder, or if Tenant shall fail to remove those items described above, Landlord may (but shall not be obligated to), at Tenant' s expense, remove any of such property and store, sell or otherwise deal with such property as provided in Section 11.02(b), including the waiver and indemnity obligations provided in that Section, and undertake, at Tenant' s expense, such restoration work as Landlord deems necessary or advisable.

#### 12.02 LANDLORD' S RIGHTS



All property which may be removed from the Premises by Landlord shall be conclusively presumed to have been abandoned by Tenant and Landlord may deal with such property as provided in Section 11.02(b), including the waiver and indemnity obligations provided in that Section. Tenant shall also reimburse Landlord for all costs and expenses incurred by Landlord in removing any of Tenant Additions required to be removed pursuant to Section 12.01 above and in restoring the Premises to the condition required by this Lease at the Termination Date.

ARTICLE THIRTEEN  
HOLDING OVER

Tenant shall pay Landlord the greater of (i) 150% of the monthly Rent payable for the month immediately preceding the holding over (including increases for Rent Adjustments which Landlord may reasonably estimate) or, (ii) 150% of the fair market rental value of the Premises as reasonably determined by Landlord for each month or portion thereof that Tenant retains possession of the Premises, or any portion thereof, after the Termination Date (without reduction for any partial month that Tenant retains possession). Tenant shall also pay all damages sustained by

Landlord by reason of such retention of possession. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord and Tenant's continued occupancy of the Premises shall be as a tenancy in sufferance.

## ARTICLE FOURTEEN DAMAGE BY FIRE OR OTHER CASUALTY

### 14.01 SUBSTANTIAL UNTENANTABILITY

(a) If any fire or other casualty (whether insured or uninsured) renders all or a substantial portion of the Premises or the Building untenable, Landlord shall, with reasonable promptness after the occurrence of such damage, estimate the length of time that will be required to substantially complete the repair and restoration and shall by notice advise Tenant of such estimate ("Landlord's Notice"). If Landlord estimates that the amount of time required to substantially complete such repair and restoration will exceed one hundred eighty (180) days from the date such damage occurred, then Landlord, or Tenant if all or a substantial portion of the Premises is rendered untenable, shall have the right to terminate this Lease as of the date of such damage upon giving written notice to the other at any time within twenty (20) days after delivery of Landlord's Notice, provided that if Landlord so chooses, Landlord's Notice may also constitute such notice of termination.

(b) In the event that the Building is damaged or destroyed to the extent of more than twenty-five percent (25%) of its replacement cost or to any extent if no insurance proceeds or insufficient insurance proceeds are receivable by Landlord, or if the buildings at the Project shall be damaged to the extent of fifty percent (50%) or more of the replacement value or to any extent if no insurance proceeds or insufficient insurance proceeds are receivable by Landlord, and regardless of whether or not the Premises be damaged, Landlord may elect by written notice to Tenant given within thirty (30) days after the occurrence of the casualty to terminate this Lease in lieu of so restoring the Premises, in which event this Lease shall terminate as of the date specified in Landlord's notice, which date shall be no later than sixty (60) days following the date of Landlord's notice.

(c) Unless this Lease is terminated as provided in the preceding Subsections 14.01 (a) and (b), Landlord shall proceed with reasonable promptness to repair and restore the Premises to its condition as existed prior to such casualty, subject to reasonable delays for insurance adjustments and Force Majeure delays, and also subject to zoning Laws and building codes then in effect. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the time period estimated by Landlord so long as Landlord shall proceed with reasonable diligence to complete such repairs and restoration.

(d) Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damages to the Premises, except for those proceeds of Tenant's insurance of its own personal property and equipment which would be removable by Tenant at the Termination Date. All such insurance proceeds shall be payable to Landlord whether or not the Premises are to be repaired and restored, provided, however, if this Lease is not terminated and the parties proceed to repair and restore Tenant Additions at Tenants cost, to the extent Landlord received proceeds of Tenant's insurance covering Tenant Additions, such proceeds shall be applied to reimburse Tenant for its cost of repairing and restoring Tenant Additions.

(e) Notwithstanding anything in this Article Fourteen to the contrary: (i) Landlord shall have no duty pursuant to this Section to repair or restore any portion of any Tenant Additions or to expend for any repair or restoration of the Premises or Building amounts in excess of insurance proceeds paid to Landlord and available for repair or restoration; and (ii) Tenant shall not have the right to terminate this Lease pursuant to this Section if any damage or destruction was caused by the gross negligence or willful and wrongful act of Tenant, its agent or employees. Whether or not the Lease is terminated pursuant to this Article Fourteen, in no event shall Tenant be entitled to any compensation or damages for loss of the use of the whole or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, rebuilding or restoration of the Premises or the Building or access thereto.

(f) Any repair or restoration of the Premises performed by Tenant shall be in accordance with the provisions of Article Nine hereof.

### 14.02 INSUBSTANTIAL UNTENANTABILITY

Unless this Lease is terminated as provided in the preceding Subsections 14.01 (a) and (b), then Landlord shall proceed to repair and restore the Building or the Premises other than Tenant Additions, with reasonable promptness, unless such damage is to the Premises and occurs during the last six (6) months of the Term, in which event either Tenant or Landlord shall have the right to terminate this Lease as of the date of such casualty by giving written notice thereof to the other within twenty (20) days after the date of such casualty. Notwithstanding the foregoing, Landlord's obligation to repair shall be limited in accordance with the provisions of Section 14.01 above.

#### 14.03 RENT ABATEMENT

Except for (i) the willful and wrongful act of Tenant or its agents, employees, contractors or invitees, or (ii) the gross negligence of Tenant or its agents, employees, contractors or invitees only if and to the extent Landlord receives rental abatement insurance proceeds covering abatement of the Rent hereunder, then, if all or any part of the Premises are rendered untenable by fire or other casualty and this Lease is not terminated, Monthly Base Rent and Rent Adjustments shall abate for that part of the Premises which is untenable on a per diem basis from the date of the casualty until Landlord has Substantially Completed the repair and restoration work in the Premises which it is required to perform, provided, that as a result of such casualty, Tenant does not occupy the portion of the Premises which is untenable during such period.

#### 14.04 WAIVER OF STATUTORY REMEDIES

The provisions of this Lease, including this Article Fourteen, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, the Premises or the Property or any part of either, and any Law, including Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, with respect to any rights or obligations concerning damage or destruction shall have no application to this Lease or to any damage to or destruction of all or any part of the Premises or the Property or any part of either, and are hereby waived.

### ARTICLE FIFTEEN EMINENT DOMAIN

#### 15.01 TAKING OF WHOLE OR SUBSTANTIAL PART

In the event the whole or any substantial part of the Building or of the Premises is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation) and is thereby rendered untenable, this Lease shall terminate as of the date title vests in such authority or any earlier date on which possession is required to be surrendered to such authority, and Monthly Base Rent and Rent Adjustments shall be apportioned as of the Termination Date. Further, if at least twenty-five percent (25%) of the rentable area of the Project is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation), and regardless of whether or not the Premises be so taken or condemned, Landlord may elect by written notice to Tenant to terminate this Lease as of the date title vests in such authority or any earlier date on which possession is required to be surrendered to such authority, and Monthly Base Rent and Rent Adjustments shall be apportioned as of the Termination Date. Landlord may, without any obligation to Tenant, agree to sell or convey to the taking authority the Premises, the Building, Tenant' s Phase, the Project or any portion thereof sought by the taking authority, free from this Lease and the right of Tenant hereunder, without first requiring that any action or proceeding be instituted or, if instituted, pursued to a judgment. Notwithstanding anything to the contrary herein set forth, in the event the taking of the Building or Premises is temporary (for less than the remaining term of the Lease), Landlord may elect either (i) to terminate this Lease or (ii) permit Tenant to receive the entire award attributable to the Premises in which case Tenant shall continue to pay Rent and this Lease shall not terminate.

#### 15.02 TAKING OF PART

In the event a part of the Building or the Premises is taken or condemned by any competent authority (or a deed is delivered in lieu of condemnation) and this Lease is not terminated, the Lease shall be amended to reduce or increase, as the case may be, the Monthly Base Rent and Tenant' s Share to reflect the Rentable Area of the Premises or Building, as the case may be, remaining after any such taking or condemnation. Landlord, upon receipt and to the extent of the award in condemnation (or proceeds of sale) shall make necessary repairs and restorations to the Premises (exclusive of Tenant Additions) and to the Building to the extent necessary to constitute the portion of the Building not so taken or condemned as a complete architectural and economically efficient unit. Notwithstanding the foregoing, if as a result of any taking, or a governmental order that the grade of any street or alley adjacent to the Building is to be changed and such taking or change of grade makes it necessary or desirable to substantially remodel or restore the Building or prevents the economical operation of the Building, Landlord shall have the right to terminate this Lease upon ninety (90) days prior written notice to Tenant.

#### 15.03 COMPENSATION

Landlord shall be entitled to receive the entire award (or sale proceeds) from any such taking, condemnation or sale without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant' s interest, if any, in such award; provided, however, Tenant shall have the right separately to pursue against the condemning authority a separate award in respect of the loss, if any, to Tenant Additions paid for by Tenant without any credit or allowance from Landlord, for fixtures or personal property of Tenant, or for relocation or business interruption expenses, so long as there is no diminution of Landlord' s award as a result.

### ARTICLE SIXTEEN INSURANCE

#### 16.01 TENANT' S INSURANCE

Tenant, at Tenant' s expense, agrees to maintain in force, with a company or companies acceptable to Landlord, during the Term: (a) Commercial General Liability Insurance on a primary basis and without any right of contribution from any insurance carried by Landlord covering the Premises on an occurrence basis against all claims for personal injury, bodily injury, death and property damage, including contractual liability covering the indemnification provisions in this Lease. Such insurance shall be for such limits that are reasonably required by Landlord from time to time but not less than a combined single limit of Five Million and

No/100 Dollars (\$5,000,000.00); (b) Workers' Compensation and Employers' Liability Insurance to the extent required by and in accordance with the Laws of the State of California; (c) "All Risks" property insurance in an amount adequate to cover the full replacement cost of all Tenant Additions to the Premises, equipment, installations, fixtures and contents of the Premises in the event of loss; (d) In the event a motor vehicle is to be used by Tenant in connection with its business operation from the Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than Three Million and No/100 Dollars (\$3,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Tenant, its agents and employees in connection with this Lease, of any owned, non-owned or hired motor vehicles; and (e) such other insurance or coverages as Landlord reasonably requires.

#### 16.02 FORM OF POLICIES

Each policy referred to in 16.01 shall satisfy the following requirements. Each policy shall (i) name Landlord and the Indemnitees as additional insureds (except Workers' Compensation and Employers' Liability Insurance), (ii) be

issued by one or more responsible insurance companies licensed to do business in the State of California reasonably satisfactory to Landlord, (iii) where applicable, provide for deductible amounts satisfactory to Landlord and not permit co-insurance, (iv) shall provide that such insurance may not be canceled or amended without thirty (30) days' prior written notice to the Landlord, and (v) each policy of "All-Risks" property insurance shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Tenant shall deliver to Landlord, certificates of insurance and at Landlord's request, copies of all policies and renewals thereof to be maintained by Tenant hereunder, not less than ten (10) days prior to the Commencement Date and not less than ten (10) days prior to the expiration date of each policy.

#### 16.03 LANDLORD'S INSURANCE

Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of California on the Building in amounts not less than the greater of eighty (80%) percent of the then full replacement cost (without depreciation) of the Building (above foundations and excluding Tenant Additions to the Premises) or an amount sufficient to prevent Landlord from becoming a co-insurer under the terms of the applicable policies, against fire and such other risks as may be included in standard forms of all risk coverage insurance reasonably available from time to time. Landlord agrees to maintain in force during the Term, Commercial General Liability Insurance covering the Building on an occurrence basis against all claims for personal injury, bodily injury, death and property damage. Such insurance shall be for a combined single limit of Five Million and No/100 Dollars (\$5,000,000.00). Neither Landlord's obligation to carry such insurance nor the carrying of such insurance shall be deemed to be an indemnity by Landlord with respect to any claim, liability, loss, cost or expense due, in whole or in part, to Tenant's negligent acts or omissions or willful misconduct. Without obligation to do so, Landlord may, in its sole discretion from time to time, carry insurance in amounts greater and/or for coverage additional to the coverage and amounts set forth above.

#### 16.04 WAIVER OF SUBROGATION

(a) Landlord agrees that, if obtainable at no, or minimal, additional cost, and so long as the same is permitted under the laws of the State of California, it will include in its "All Risks" policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant with respect to losses payable under such policies and/or (ii) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies.

(b) Tenant agrees to include, if obtainable at no, or minimal, additional cost, and so long as the same is permitted under the laws of the State of California, in its "All Risks" insurance policy or policies on Tenant Additions to the Premises, whether or not removable, and on Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions of this Lease appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord and/or any tenant of space in the Building with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. If Tenant is unable to obtain in such policy or policies either of the clauses described in the preceding sentence, Tenant shall, if legally possible and without necessitating a change in insurance carriers, have Landlord named in such policy or policies as an additional insured. If Landlord shall be named as an additional insured in accordance with the foregoing, Landlord agrees to endorse promptly to the order of Tenant, without recourse, any check, draft, or order for the payment of money representing the proceeds of any such policy or representing any other payment growing out of or connected with said policies, and Landlord does hereby irrevocably waive any and all rights in and to such proceeds and payments.

(c) Provided that Landlord's right of full recovery under its policy or policies aforesaid is not adversely affected or prejudiced thereby, Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Real Property and the fixtures, appurtenances and equipment therein, except Tenant Additions, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Provided that Tenant's right of full recovery under its aforesaid policy or policies is not adversely affected or prejudiced thereby, Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees and against every other tenant in the Real Property who shall have executed a similar waiver as set forth in this Section 16.04 (c) for loss or damage to Tenant Additions, whether or not removable, and to Tenant's furniture, furnishings, fixtures and other properly removable by Tenant under the provisions hereof to the extent the same is covered or coverable by Tenant's insurance required under this Lease, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

(d) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (a) and (b) above cannot be obtained on the terms hereinbefore provided and thereafter to furnish the other with a certificate of insurance or copy of such policies showing the naming of the other as an additional insured, as aforesaid. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy which would affect such clauses or naming. All such policies which name both Landlord and Tenant as additional insureds shall, to the extent obtainable, contain agreements by the insurers to the effect that no act or omission of any additional insured will invalidate the policy as to the other additional insureds.

#### 16.05 NOTICE OF CASUALTY

Tenant shall give Landlord notice in case of a fire or accident in the Premises promptly after Tenant is aware of such event.



ARTICLE SEVENTEEN  
WAIVER OF CLAIMS AND INDEMNITY

17.01 WAIVER OF CLAIMS

To the extent permitted by Law, Tenant releases the Indemnitees from, and waives all claims for, damage to person or property sustained by the Tenant or any occupant of the Premises or the Property resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Premises or the Property, or any part of either, or any equipment or appurtenance therein, or resulting from any accident in or about the Premises or the Property, or resulting directly or indirectly from any act or neglect of any tenant or occupant of the Property or of any other person, including Landlord's agents and servants, except to the extent caused by the gross negligence or willful and wrongful act of any of the Indemnitees, If any such damage, whether to the Premises or the Property or any part of either, or whether to Landlord or to other tenants in the Property, results from any act or neglect of Tenant, its employees, servants, agents, contractors, invitees or customers, Tenant shall be liable therefor and Landlord may, at Landlord's option, repair such damage and Tenant shall, upon demand by Landlord, as payment of additional Rent hereunder, reimburse Landlord within ten (10) days of demand for the total cost of such repairs, in excess of amounts, if any, paid to Landlord under insurance covering such damages. Tenant shall not be liable for any such damage caused by its acts or neglect to the extent that Landlord or a tenant has recovered any amount of the damage from proceeds of insurance policies and the insurance company has waived its right of subrogation against Tenant.

17.02 INDEMNITY BY TENANT

To the extent permitted by Law, Tenant hereby indemnifies, and agrees to protect, defend and hold the Indemnitees harmless, against any and all actions, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, arising from Tenant's occupancy of the Premises, from the undertaking of any Tenant Additions or repairs to the Premises, from the conduct of Tenant's business on the Premises, or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any willful act or negligence of Tenant, its agents, contractors, servants, employees, customers or invitees, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Landlord, in Landlord's sole discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. The foregoing indemnity shall not operate to relieve an Indemnitee of liability to the extent such liability is caused by the gross negligence or willful and wrongful act of such Indemnitee. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.04 by Landlord or its insurers to the extent of amounts, if any, paid to Landlord under its "All-Risks" property insurance.

17.03 WAIVER OF CONSEQUENTIAL DAMAGES

To the extent permitted by law, Tenant hereby waives and releases the Indemnitees from any consequential damages, compensation or claims for inconvenience or loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful and wrongful act of any of the Indemnitees.

ARTICLE EIGHTEEN  
RULES AND REGULATIONS

18.01 RULES

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with all reasonable rules and regulations for use of the Premises, the Building, the Phase and the Project imposed by Landlord, as the same may be revised from time to time, including the following: (a) Tenant shall comply with all of the requirements of Landlord's emergency response plan, as the same may be amended from time to time; and (b) Tenant shall not place any furniture, furnishings, fixtures or equipment in the Premises in a manner so as to obstruct the windows of the Premises to cause the Building, in Landlord's good faith determination, to appear unsightly from the exterior. Such rules and regulations are and shall be imposed for the cleanliness, good appearance, proper maintenance, good order and reasonable use of the Premises, the Building, the Phase and the Project and as may be necessary for the enjoyment of the Building and the Project by all tenants and their clients, customers, and employees.

18.02 ENFORCEMENT

Nothing in this Lease shall be construed to impose upon the Landlord any duty or obligation to enforce the rules and regulations as set forth above or as hereafter adopted, or the terms, covenants or conditions of any other lease as against any other tenant, and the Landlord shall not be liable to the Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. Landlord shall use reasonable efforts to enforce the rules and regulations of the Building in a uniform and non-discriminatory manner.

ARTICLE NINETEEN  
LANDLORD' S RESERVED RIGHTS

Landlord shall have the following rights exercisable without notice to Tenant and without liability to Tenant for damage or injury to persons, property or business and without being deemed an eviction or disturbance of Tenant' s use or possession of the Premises or giving rise to any claim for offset or abatement of Rent: (1) to change the Building' s name or street address upon thirty (30) days' prior written notice to Tenant; (2) to install, affix and maintain all signs on the exterior and/or interior of the Building; (3) 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; (4) upon reasonable notice to Tenant, to display the Premises to

prospective purchasers at reasonable hours at any time during the Term and to prospective tenants at reasonable hours during the last twelve (12) months of the Term; (5) to grant to any party the exclusive right to conduct any business or render any service in or to the Building, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose permitted hereunder; (6) to change the arrangement and/or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, washrooms or public portions of the Building, and to close entrances, doors, corridors, elevators or other facilities, provided that such action shall not materially and adversely interfere with Tenant's access to the Premises or the Building; (7) to have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises as required by any applicable rules of the United States Post Office; and (8) to close the Building after Standard Operating Hours, except that Tenant and its employees and invitees shall be entitled to admission at all times, under such regulations as Landlord prescribes for security purposes.

## ARTICLE TWENTY ESTOPPEL CERTIFICATE

### 20.01 IN GENERAL

Within fifteen (15) days after request therefor by Landlord, Mortgagee or any prospective mortgagee or owner, Tenant agrees as directed in such request to execute an Estoppel Certificate in recordable form, binding upon Tenant, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in the possession of the Premises if that is the case; (iv) that Landlord is not in default under this Lease, or, if Tenant believes Landlord is in default, the nature thereof in detail; (v) that Tenant has no offsets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any offsets or defenses, a full and complete explanation thereof); (vi) that the Premises have been completed in accordance with the terms and provisions hereof, that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto; (vii) that if an assignment of rents or leases has been served upon the Tenant by a Mortgagee, Tenant will acknowledge receipt thereof and agree to be bound by the provisions thereof; (viii) that Tenant will give to the Mortgagee copies of all notices required or permitted to be given by Tenant to Landlord; and (ix) to any other information reasonably requested.

### 20.02 ENFORCEMENT

In the event that Tenant fails to deliver an Estoppel Certificate within three (3) business days after Tenant has received notice from Landlord of Tenant's failure to deliver an Estoppel Certificate within the time prescribed in Section 20.01 above, then such failure shall be a Default for which there shall be no additional cure or grace period. In addition to any other remedy available to Landlord, Landlord may impose a charge equal to \$500.00 for each day that Tenant fails to deliver an Estoppel Certificate and Tenant shall be deemed to have irrevocably appointed Landlord as Tenant's attorney-in-fact to execute and deliver the subject Estoppel Certificate that Tenant has failed to deliver.

## ARTICLE TWENTY-ONE INTENTIONALLY OMITTED

## ARTICLE TWENTY-TWO REAL ESTATE BROKERS

Landlord and Tenant represent to each other that in connection with this Lease they are represented by Tenant's Broker identified in Section 1.01(19) and Landlord's Broker identified in Section 1.01(19), and that except for Tenant's Broker and Landlord's Broker, neither has dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such person initiated or participated in the negotiation of this Lease. Landlord and Tenant hereby indemnify and agree to protect, defend and hold the other harmless from and against all claims, losses, damages, liability, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) by virtue of any broker, agent or other person claiming a commission or other form of compensation by virtue of alleged representation of, or dealings or discussions with, Landlord or Tenant, as applicable, with respect to the subject matter of this Lease, except for Landlord's Broker and except for a commission payable to Tenant's Broker to the extent provided for in a separate written agreement between Tenant's Broker and Landlord's Broker. Tenant is not obligated to pay or fund any amount to Landlord's Broker, and Landlord hereby agrees to pay such commission, if any, to which Landlord's Broker is entitled in connection with the subject matter of this Lease pursuant to Landlord's separate written agreement with Landlord's Broker. Such commission shall include an amount to be shared by Landlord's Broker with Tenant's Broker to the extent that Tenant's Broker and Landlord's Broker have entered into a separate agreement between themselves to share the commission paid to Landlord's Broker by Landlord. The provisions of this Section shall survive the expiration or earlier termination of the Lease.

ARTICLE TWENTY-THREE  
MORTGAGEE PROTECTION

23.01 SUBORDINATION AND ATTORNMENT

This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Real Property, now or hereafter existing, and all amendments, extensions, renewals and modifications to any such lease, and (ii) the lien of any mortgage or trust deed now or hereafter encumbering fee title to the Real Property and/or the leasehold estate under any such lease, and all amendments, extensions, renewals, replacements and modifications of such mortgage or trust deed and/or the obligation secured thereby, unless such ground lease or ground lessor, or mortgage, trust deed or Mortgagee, expressly provides or elects that the Lease shall be superior to such lease or mortgage or trust deed. If any such mortgage or trust deed is foreclosed (including any sale of the Real Property pursuant to a power of sale), or if any such lease is terminated, upon request of the Mortgagee or

ground lessor, as the case may be, Tenant shall attorn to the purchaser at the foreclosure sale or to the ground lessor under such lease, as the case may be, provided, however, that such purchaser or ground lessor shall not be (i) bound by any payment of Rent for more than one month in advance except payments in the nature of security for the performance by Tenant of its obligations under this Lease; (ii) subject to any offset, defense or damages arising out of a default of any obligations of any preceding Landlord; or (iii) bound by any amendment or modification of this Lease made without the written consent of the Mortgagee or ground lessor; or (iv) liable for any security deposits not actually received in cash by such purchaser or ground lessor. This subordination shall be self-operative and no further certificate or instrument of subordination need be required by any such Mortgagee or ground lessor. In confirmation of such subordination, however, Tenant shall execute promptly any reasonable certificate or instrument that Landlord, Mortgagee or ground lessor may request. Tenant hereby constitutes Landlord as Tenants attorney-in-fact to execute such certificate or instrument for and on behalf of Tenant upon Tenants failure to do so within fifteen (15) days of a request to do so. Upon request by such successor in interest, Tenant shall execute and deliver reasonable instruments confirming the attainment provided for herein.

## 23.02 MORTGAGEE PROTECTION

Tenant agrees to give any Mortgagee or ground lessor, by registered or certified mail, a copy of any notice of default served upon the Landlord by Tenant, provided that prior to such notice Tenant has received notice (by way of service on Tenant of a copy of an assignment of rents and leases, or otherwise) of the address of such Mortgagee or ground lessor. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee or ground lessor shall have an additional thirty (30) days after receipt of notice thereof within which to cure such default or if such default cannot be cured within that time, then such additional notice time as may be necessary, if, within such thirty (30) days, any Mortgagee or ground lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings or other proceedings to acquire possession of the Real Property, if necessary to effect such cure). Such period of time shall be extended by any period within which such Mortgagee or ground lessor is prevented from commencing or pursuing such foreclosure proceedings or other proceedings to acquire possession of the Real Property by reason of Landlord's bankruptcy. Until the time allowed as aforesaid for Mortgagee or ground lessor to cure such defaults has expired without cure, Tenant shall have no right to, and shall not, terminate this Lease on account of default. This Lease may not be modified or amended so as to reduce the Rent or shorten the Term, or so as to adversely affect in any other respect to any material extent the rights of the Landlord, nor shall this Lease be canceled or surrendered, without the prior written consent, in each instance, of the ground lessor or the Mortgagee.

## ARTICLE TWENTY-FOUR NOTICES

(a) All notices, demands or requests provided for or permitted to be given pursuant to this Lease must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, or mailed by first class, registered or certified United States mail, return receipt requested, postage prepaid.

(b) All notices, demands or requests to be sent pursuant to this Lease shall be deemed to have been properly given or served by delivering or sending the same in accordance with this Section, addressed to the parties hereto at their respective addresses listed in Sections 1.01(2) and (3).

(c) Notices, demands or requests sent by mail or overnight courier service as described above shall be effective upon deposit in the mail or with such courier service. However, the time period in which a response to any such notice, demand or request must be given shall commence to run from (i) in the case of delivery by mail, the date of receipt on the return receipt of the notice, demand or request by the addressee thereof, or (ii) in the case of delivery by Federal Express or other overnight courier service, the date of acceptance of delivery by an employee, officer, director or partner of Landlord or Tenant. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, as indicated by advice from Federal Express or other overnight courier service or by mail return receipt, shall be deemed to be receipt of notice, demand or request sent. Notices may also be served by personal service upon any officer, director or partner of Landlord or Tenant, and shall be effective upon such service.

(d) By giving to the other party at least thirty (30) days written notice thereof, either party shall have the right from time to time during the term of this Lease to change their respective addresses for notices, statements, demands and requests, provided such new address shall be within the United States of America.

## ARTICLE TWENTY-FIVE EXERCISE FACILITY

Tenant agrees to inform all employees of Tenant of the following: (i) the exercise facility is available for the use of the employees of tenants of the Project only and for no other person; (ii) use of the facility is at the risk of Tenant or Tenant's employees, and all users must sign a release; (iii) the facility is unsupervised; and (iv) users of the facility must report any needed equipment maintenance or any unsafe conditions to the Landlord immediately. Landlord may discontinue providing such facility at

Landlord's sole option at any time without incurring any liability. As a condition to the use of the exercise facility, Tenant and each of Tenant's employees that uses the exercise facility shall first sign a written release in form and substance acceptable to Landlord. Landlord may change the rules and/or hours of the exercise facility at any time, and Landlord reserves the right to deny access to the exercise facility to anyone due to misuse of the facility or noncompliance with rules and regulations of the facility. To the extent permitted by Law, Tenant hereby indemnifies, and agrees to protect, defend and hold the Indemnitees harmless, against any and all actions, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, arising from use of the exercise facility in the Project by Tenant, Tenant's employees or invitees, except to the extent due to the gross negligence or willful and wrongful act of Landlord or Indemnitees. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen

by Landlord, in Landlord's sole discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity.

## ARTICLE TWENTY-SIX MISCELLANEOUS

### 26.01 LATE CHARGES

(a) The Monthly Base Rent, Rent Adjustments and Rent Adjustment Deposits shall be due when and as specifically provided above. Except for such payments and late charges described below, which late charge shall be due when provided below (without notice or demand), all other payments required hereunder to Landlord shall be paid within ten (10) days after Landlord's demand therefor. All Rent and charges, except late charges, not paid when due shall bear interest from the date due until the date paid at the Default Rate in effect on the date such payment was due.

(b) In the event Tenant is more than five (5) days late in paying any installment of Rent due under this Lease, Tenant shall pay Landlord a late charge equal to five percent (5%) of the delinquent installment of Rent. The parties agree that (i) such delinquency will cause Landlord to incur costs and expenses not contemplated herein, the exact amount of which will be difficult to calculate, including the cost and expense that will be incurred by Landlord in processing each delinquent payment of rent by Tenant, and (ii) the amount of such late charge represents a reasonable estimate of such costs and expenses and that such late charge shall be paid to Landlord for each delinquent payment in addition to all Rent otherwise due hereunder. The parties further agree that the payment of late charges and the payment of interest provided for in subparagraph (a) above are distinct and separate from one another in that the payment of interest is to compensate Landlord for its inability to use the money improperly withheld by Tenant, while the payment of late charges is to compensate Landlord for its additional administrative expenses in handling and processing delinquent payments.

(c) Payment of interest at the Default Rate and/or of late charges shall not excuse or cure any default by Tenant under this Lease, nor shall the foregoing provisions of this Article or any such payments prevent Landlord from exercising any right or remedy available to Landlord upon Tenants failure to pay Rent when due, including the right to terminate this Lease.

### 26.02 NO JURY TRIAL; VENUE; JURISDICTION

Each party hereto (which includes any assignee, successor, heir or personal representative of a party) shall not seek a jury trial, hereby waives trial by jury, and hereby further waives any objection to venue in the County in which the Project is located, and agrees and consents to personal jurisdiction of the courts of the State of California, in any action or proceeding or counterclaim brought by any party hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any statute, emergency or otherwise, whether any of the foregoing is based on this Lease or on tort law. No party will seek to consolidate any such action in which a jury has been waived with any other action in which a jury trial cannot or has not been waived. It is the intention of the parties that these provisions shall be subject to no exceptions. By execution of this Lease the parties agree that this provision may be filed by any party hereto with the clerk or judge before whom any action is instituted, which filing shall constitute the written consent to a waiver of jury trial pursuant to and in accordance with Section 631 of the California Code of Civil Procedure. No party has in any way agreed with or represented to any other party that the provisions of this Section will not be fully enforced in all instances. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

### 26.03 DEFAULT UNDER OTHER LEASE

It shall be a Default under this Lease if Tenant or any Affiliate holding any other lease with Landlord for premises in the Project defaults under such lease and as a result thereof such lease is terminated or terminable.

### 26.04 OPTION

This Lease shall not become effective as a lease or otherwise until executed and delivered by both Landlord and Tenant. The submission of the Lease to Tenant does not constitute a reservation of or option for the Premises, but when executed by Tenant and delivered to Landlord, the Lease shall constitute an irrevocable offer by Tenant in effect for fifteen (15) days to lease the Premises on the terms and conditions herein contained.

### 26.05 TENANT AUTHORITY

Tenant represents and warrants to Landlord that it has full authority and power to enter into and perform its obligations under this Lease, that the person executing this Lease is fully empowered to do so, and that no consent or authorization is necessary from any third party. Landlord may request that Tenant provide Landlord evidence of Tenant's authority.

### 26.06 ENTIRE AGREEMENT



This Lease, the Exhibits and Riders attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written, and no other representations or statements, either oral or written, on which Tenant has relied. This Lease shall not be modified except by a writing executed by Landlord and Tenant.

#### 26.07 MODIFICATION OF LEASE FOR BENEFIT OF MORTGAGEE

If Mortgagee of Landlord requires a modification of this Lease which shall not result in any increased cost or expense to Tenant or in any other material and adverse change in the rights and obligations of Tenant hereunder, then Tenant agrees that the Lease may be so modified.

#### 26.08 EXCULPATION

Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation of Landlord in connection with this Lease shall only be enforced against Landlord's equity interest in the Property up to a maximum of Five Million Dollars (\$5,000,000.00) and in no event against any other assets of the Landlord, or Landlord's officers or directors or partners, and that any liability of Landlord with respect to this Lease shall be so limited and Tenant shall not be entitled to any judgment in excess of such amount.

#### 26.09 ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term. Receipt or acceptance of payment from anyone other than Tenant, including an assignee of Tenant, is not a waiver of any breach of Article Ten, and Landlord may accept such payment on account of the amount due without prejudice to Landlord's right to pursue any remedies available to Landlord.

#### 26.10 LANDLORD'S OBLIGATIONS ON SALE OF BUILDING

In the event of any sale or other transfer of the Building, Landlord shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer (provided, however, that Landlord shall not be freed and relieved of its obligation for reimbursement of the Security to Tenant unless Landlord has transferred to such transferee the unapplied balance of Tenant's Security held by Landlord at such time), and any remaining liability of Landlord with respect to this Lease shall be limited to Five Million Dollars (\$5,000,000.00) and Tenant shall not be entitled to any judgment in excess of such amount.

#### 26.11 BINDING EFFECT

Subject to the provisions of Article Ten, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

#### 26.12 CAPTIONS

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

#### 26.13 TIME; APPLICABLE LAW; CONSTRUCTION

Time is of the essence of this Lease and each and all of its provisions. This Lease shall be construed in accordance with the Laws of the State of California. If more than one person signs this Lease as Tenant, the obligations hereunder imposed shall be joint and several. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each item, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by Law. Wherever the term "including" or "includes" is used in this Lease, it shall have the same meaning as if followed by the phrase "but not limited to". The language in all parts of this Lease shall be construed according to its normal and usual meaning and not strictly for or against either Landlord or Tenant.

#### 26.14 ABANDONMENT

In the event Tenant vacates or abandons the Premises but is otherwise in compliance with all the terms, covenants and conditions of this Lease, Landlord shall (i) have the right to enter into the Premises in order to show the space to prospective tenants, (ii) have the right to reduce the services provided to Tenant pursuant to the terms of this Lease to such levels as Landlord reasonably determines to be adequate services for an unoccupied premises and (iii) during the last six (6) months of the Term, have the right to prepare the Premises for occupancy by another tenant upon the end of the Term. Tenant expressly acknowledges that in the absence of written notice pursuant to Section 11.02(b) or pursuant to California Civil Code Section 1951.3 terminating Tenant's right to possession, none of the foregoing acts of Landlord or any other act of Landlord shall

constitute a termination of Tenant' s right to possession or an acceptance of Tenant' s surrender of the Premises, and the Lease shall continue in effect.

#### 26.15 LANDLORD' S RIGHT TO PERFORM TENANT' S DUTIES

If Tenant fails timely to perform any of its duties under this Lease, Landlord shall have the right (but not the obligation), to perform such duty on behalf and at the expense of Tenant without prior notice to Tenant, and all sums expended or expenses incurred by Landlord in performing such duty shall be deemed to be additional Rent under this Lease and shall be due and payable upon demand by Landlord.

26.16 SECURITY SYSTEM

Landlord shall not be obligated to provide or maintain any security patrol or security system. Landlord shall not be responsible for the quality of any such patrol or system which may be provided hereunder or for damage or injury to Tenant, its employees, invitees or others due to the failure, action or inaction of such patrol or system.

26.17 NO LIGHT, AIR OR VIEW EASEMENTS

Any diminution or shutting off of light, air or view by any structure which may be erected on lands of or adjacent to the Project shall in no way affect this Lease or impose any liability on Landlord.

26.18 RECORDATION

Neither this Lease, nor any notice nor memorandum regarding the terms hereof, shall be recorded by Tenant. Any such unauthorized recording shall be a Default for which there shall be no cure or grace period. Tenant agrees to execute and acknowledge, at the request of Landlord, a memorandum of this Lease, in recordable form.

26.19 SURVIVAL

The waivers of the right of jury trial, the other waivers of claims or rights, the releases and the obligations of Tenant under this Lease to indemnify, protect, defend and hold harmless Landlord and/or Indemnitees shall survive the expiration or termination of this Lease, and so shall all other obligations or agreements which by their terms survive expiration or termination of the Lease.

26.20 EXHIBITS OR RIDERS

All exhibits, riders and/or addenda referred to in this Lease as an exhibit, addenda or rider hereto or attached hereto, are hereby incorporated into and made a part of this Lease.

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth in Section 1.01(4) hereof.

TENANT:

Genomic Health, Inc.,  
a Delaware corporation

By /s/ Randal Scott  
Randal Scott  
Print name

Its Chairman and CEO  
(Chairman of Board, President or Vice President)

By /s/ G. Bradley Cole  
G. Bradley Cole  
Print name

Its Exec. VP and CFO  
(Secretary, Assistant Secretary, CFO or Assistant Treasurer)

LANDLORD:

Metropolitan Life Insurance Company,  
a New York corporation

By /s/ Greg H. Hill  
Greg H. Hill  
Print name

Its Director

EXHIBIT "A"  
PLAN OF PREMISES

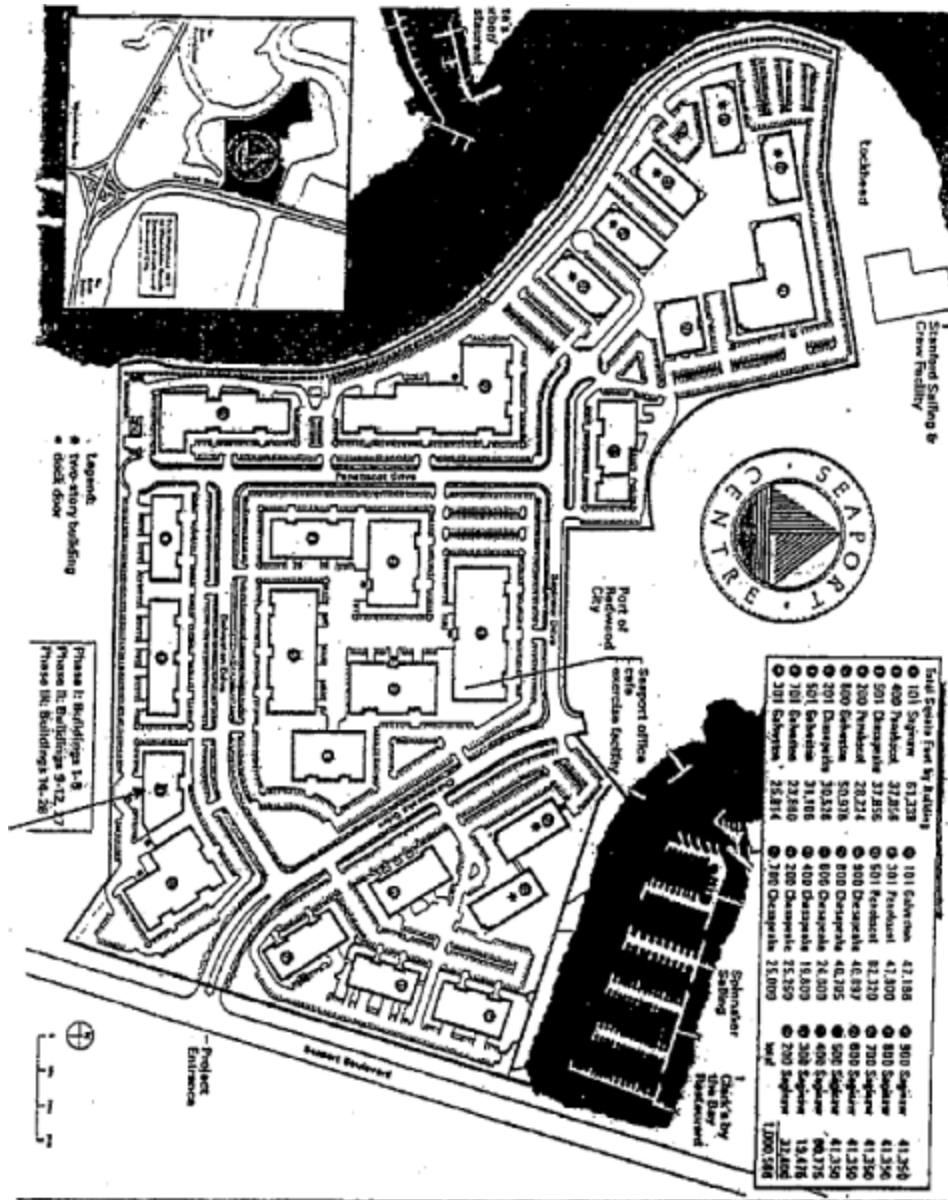


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EXHIBITS B  
WORKLETTER AGREEMENT

This Workletter Agreement (“Workletter”) is attached to and a part of a certain Lease by and between Metropolitan Life Insurance Company, a New York corporation, as Landlord, and Genomic Health, Inc., a Delaware corporation, as Tenant, for the Premises (the “Lease”). Terms used herein and not defined herein shall have the meaning of such terms as defined elsewhere in the Lease. For purposes of this Workletter, references to “State” and “City” shall mean the State and City in which the Building is located.

1. Base Building.

All work performed during the Building’s initial course of construction and modifications thereto, excluding all original and modified build-outs of any tenant spaces, shall be referred to as the “Base Building Work” or “Base Building”, as applicable. Neither Landlord nor Landlord’s representatives have made any representations or promises with respect to the Premises or the Base Building except as herein expressly set forth. Provided however, Landlord agrees that the Building Systems (defined in Section 3.2 below) which are part of the Base Building, except to the extent of any to be removed, demolished or altered by Tenant, will be delivered by Landlord in good working order and condition.

2. Landlord Work.

There shall be no Landlord Work.

3. Tenant’s Plans.

3.1. Description. At its expense, Tenant shall employ:

(i) one or more architects reasonably satisfactory to Landlord and licensed by the State (“Tenant’s Architect”) to prepare architectural drawings and specifications for all layout and Premises improvements not included in, or requiring any change or addition to, the AS IS condition and Landlord Work, if any.

(ii) one or more engineers reasonably satisfactory to Landlord and licensed by the State (“Tenant’s Engineers”) to prepare structural, mechanical and electrical working drawings and specifications for all Premises improvements not included in, or requiring any change or addition to, the AS IS condition and Landlord Work, if any.

All such drawings and specifications are referred to herein as “Tenant’s Plans”. Tenant’s Plans shall be in form and detail sufficient to secure all applicable governmental approvals. Tenant’s Architect shall be responsible for coordination of all engineering work for Tenant’s Plans and shall coordinate with any consultants retained by Tenant in connection with the design and installation of improvements to the Premises (the use of such consultants is subject to Landlord’s consent), and Landlord’s architect or other representative to assure the consistency of Tenant’s Plans with the Base Building Work and Landlord Work (if any).

Tenant shall pay Landlord, within ten (10) days of receipt of each invoice from Landlord, the cost incurred by Landlord for Landlord’s architects and engineers to review Tenant’s Plans for consistency of same with the Base Building Work and Landlord Work, if any. Tenant’s Plans shall also include the following:

(a) Final Space Plan: The “Final Space Plan” for the Premises shall include a full and accurate description of room titles, floor loads, alterations to the Base Building or Landlord Work (if any) or requiring any change or addition to the AS IS condition, and the dimensions and location of all partitions, doors, aisles, plumbing (and furniture and equipment to the extent same affect floor loading). The Final Space Plan shall (i) be compatible with the design, construction, systems and equipment of the Base Building and Landlord Work, if any; (ii) specify only materials, equipment and installations which are new and of a grade and quality no less than existing components of the Building when they were originally installed (collectively, (i) and (ii) may be referred to as “Building Standard” or “Building Standards”); (iii) comply with Laws, (iv) be capable of logical measurement and construction, and (v) contain all such information as may be required for the preparation of the Mechanical and Electrical Working Drawings and Specifications (including, without limitation, a capacity and usage report, from engineers designated by Landlord pursuant to Section 3.1(b). below, for all mechanical and electrical systems in the Premises).

(b) Mechanical and Electrical Working Drawings and Specifications: Tenant shall employ engineers approved by Landlord to prepare Mechanical and Electrical Working Drawings and Specifications showing complete plans for electrical, life safety, automation, plumbing, water, and air cooling, ventilating, heating and temperature control and shall employ engineers designated by Landlord to prepare for Landlord a capacity and usage report (“Capacity Report”) for all mechanical and electrical systems in the Premises.

(c) Issued for Construction Documents: The “Issued for Construction Documents” shall consist of all drawings (1/8” scale) and specifications necessary to construct all Premises improvements including, without limitation, architectural and structural

working drawings and specifications and Mechanical and Electrical Working Drawings and Specifications and all applicable governmental authorities plan check corrections.

3.2. Approval by Landlord. Tenant' s Plans and any revisions thereof shall be subject to Landlord' s approval, which approval or disapproval:

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(i) shall not be unreasonably withheld, provided however, that Landlord may disapprove Tenant's Plans in its sole and absolute discretion if they (a) adversely affect the structural integrity of the Building, including applicable floor loading capacity; (b) adversely affect any of the Building Systems (as defined below), the Common Areas or any other tenant space (whether or not currently occupied); (c) fail to fully comply with Laws, (d) affect the exterior appearance of the Building; (e) provide for improvements which do not meet or exceed the Building Standards; or (f) involve any installation on the roof, or otherwise affect the roof, roof membrane or any warranties regarding either. Building Systems collectively shall mean the structural, electrical, mechanical (including, without limitation, heating, ventilating and air conditioning), plumbing, fire and life-safety (including, without limitation, fire protection system and any fire alarm), communication, utility, gas (if any), and security (if any) systems in the Building.

(ii) shall not be delayed beyond ten (10) business days with respect to initial submissions and major change orders (those which impact Building Systems or any other item listed in subpart (i) of Section 3.2 above) and beyond five (5) business days with respect to required revisions and any other change orders.

If Landlord disapproves of any of Tenant's Plans, Landlord shall advise Tenant of what Landlord disapproves in reasonable detail. After being so advised by Landlord, Tenant shall submit a redesign, incorporating the revisions required by Landlord, for Landlord's approval. The approval procedure shall be repeated as necessary until Tenant's Plans are ultimately approved. Approval by Landlord shall not be deemed to be a representation or warranty by Landlord with respect to the safety, adequacy, correctness, efficiency or compliance with Laws of Tenant's Plans. Tenant shall be fully and solely responsible for the safety, adequacy, correctness and efficiency of Tenant's Plans and for the compliance of Tenants Plans with any and all Laws.

**3.3. Landlord Cooperation.** Landlord shall cooperate with Tenant and make good faith efforts to coordinate Landlord's construction review procedures to expedite the planning, commencement, progress and completion of Tenant Work. Landlord shall complete its review of each stage of Tenant's Plans and any revisions thereof and communicate the results of such review within the time periods set forth in Section 3.2 above.

**3.4. City Requirements.** Any changes in Tenant's Plans which are made in response to requirements of the applicable governmental authorities and/or changes which affect the Base Building Work shall be immediately submitted to Landlord for Landlord's review and approval.

**3.5. "As-Built" Drawings and Specifications.** A CADD-DXF diskette file and a set of mylar reproducible of all "as-built" drawings and specifications of Tenant's Work in the Premises (reflecting all field changes and including, without limitation, architectural, structural, mechanical and electrical drawings and specifications) prepared by Tenant's Architect and Engineers or by Contractors (defined below) shall be delivered by Tenant at Tenant's expense to the Landlord within thirty (30) days after completion of the Tenant Work. If Landlord has not received such drawings and diskette(s) within thirty (30) days, Landlord may give Tenant written notice of such failure. If Tenant does not produce the drawings and diskette(s) within ten (10) days after Landlord's written notice, Landlord may, at Tenant's sole cost which may be deducted from the Allowance, produce the drawings and diskette(s) using Landlord's personnel, managers, and outside consultants and contractors. Landlord shall receive an hourly rate reasonable for such production.

#### **4. Tenant Work.**

**4.1. Tenant Work Defined.** All tenant improvement work required by the Issued for Construction Documents (including, without limitation, any approved changes, additions or alterations pursuant to Section 7 below) is referred to in this Workletter as "Tenant Work."

**4.2. Tenant to Construct.** Tenant shall construct all Tenant Work pursuant to this Workletter, and except to the extent modified by or inconsistent with express provisions of this Workletter, pursuant with the provisions of the terms and conditions of Article Nine of the Lease, governing Tenant Alterations (except to the extent modified by this Workletter) and all such Tenant Work shall be considered "Tenant Alterations" for purposes of the Lease.

**4.3. Construction Contract.** All contracts and subcontracts for Tenant Work shall include any terms and conditions reasonably required by Landlord.

**4.4. Contractor.** Tenant shall select one or more contractors to perform the Tenant Work ("Contractor") subject to Landlord's prior written approval, which shall not unreasonably be withheld.

**4.5. Division of Landlord Work and Tenant Work.** Tenant Work is defined in Section 4.1. above and Landlord Work, if any, is defined in Section 2.

#### **5. Tenant's Expense.**

Tenant agrees to pay for all Tenant Work, including, without limitation, the costs of design thereof, whether or not all such costs are included in the "Permanent Improvement Costs" (defined below). Subject to the terms and conditions of this

Workletter, Tenant shall apply the "Allowance" (defined below) to payment of the Permanent Improvement Costs. Landlord shall provide Tenant a tenant improvement allowance ("Allowance") in the amount equal to Two Hundred Eighty-three Thousand One Hundred Sixteen and no/100 Dollars (\$283,116.00). The Allowance shall be used solely to reimburse Tenant for the Permanent Improvement Costs. The term "Permanent Improvement Costs" shall mean the actual and reasonable costs of construction of that Tenant Work which constitutes permanent improvements to the Premises, actual and reasonable costs of design thereof and governmental permits therefor, costs incurred by Landlord for Landlord's architects and engineers pursuant to Section 3.1, and Landlord's construction administration fee (defined in Section 8.10 below). Provided, however, Permanent Improvement Costs shall exclude costs of "Tenant's FF&E" (defined

Exhibit B – Page 2

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below). For purposes of this Workletter, "Tenant's FF&E" shall mean Tenant's furniture, furnishings, telephone systems, computer systems, equipment, any other personal property or fixtures, and installation thereof, including, without limitation, "Tenant's Personal Property" described on Exhibit G hereto. If Tenant does not utilize one hundred percent (100%) of the Allowance for Permanent Improvement Costs no later than December 31, 2007, Tenant shall have no right to the unused portion of the Allowance.

## 6. Application and Disbursement of the Allowance.

6.1. Tenant shall prepare a budget for all Tenant Work, including the Permanent Improvement Costs and all other costs of the Tenant Work ("Budget"), which Budget shall be subject to the reasonable approval of Landlord. Such Budget shall be supported by a guaranteed maximum price construction contract and such other documentation as Landlord may require to evidence the total costs. To the extent the Budget exceeds the available Allowance ("Excess Cost"), Tenant shall be solely responsible for payment of such Excess Cost. Further, prior to any disbursement of the Allowance by Landlord, Tenant shall pay and disburse its own funds for all that portion of the Permanent Improvement Costs equal to the sum of (a) the Permanent Improvement Costs in excess of the Allowance; plus (b) the amount of "Landlord's Retention" (defined below). "Landlord's Retention" shall mean an amount equal to fifteen percent (15%) of the Allowance, which Landlord shall retain out of the Allowance and shall not be obligated to disburse unless and until after Tenant has completed the Tenant Work and complied with Section 6.4 below. Further, Landlord shall not be obligated to make any disbursement of the Allowance unless and until Tenant has provided Landlord with (i) bills and invoices covering all labor and material expended and used in connection with the particular portion of the Tenant Work for which Tenant has requested reimbursement, (ii) an affidavit from Tenant stating that all of such bills and invoices have either been paid in full by Tenant or are due and owing, and all such costs qualify as Permanent Improvement Costs, (iii) contractors affidavit covering all labor and materials expended and used, (iv) Tenant, contractors and architectural completion affidavits (as applicable), and (v) valid mechanics' lien releases and waivers pertaining to any completed portion of the Tenant Work which shall be conditional or unconditional, as applicable, all as provided pursuant to Section 6.2 and 6.4 below.

6.2. Upon Tenant's full compliance with the provisions of Section 6, and if Landlord determines that there are no applicable or claimed stop notices (or any other statutory or equitable liens of anyone performing any of Tenant Work or providing materials for Tenant Work) or actions thereon, Landlord shall disburse the applicable portion of the Allowance as follows:

(a) In the event of conditional releases, to the respective contractor, subcontractor, vendor, or other person who has provided labor and/or services in connection with the Tenant Work, upon the following terms and conditions: (i) such costs are included in the Budget, are Permanent Improvement Costs, are covered by the Allowance, and Tenant has completed and delivered to Landlord a written request for payment, in form reasonably approved by Landlord, setting forth the exact name of the contractor, subcontractor or vendor to whom payment is to be made and the date and amount of the bill or invoice, (ii) the request for payment is accompanied by the documentation set forth in Section 6.1; and (iii) Landlord, or Landlord's appointed representative, has inspected and approved the work for which Tenant seeks payment; or

(b) In the event of unconditional releases, directly to Tenant upon the following terms and conditions: (i) Tenant seeks reimbursement for costs of Tenant Work which have been paid by Tenant, are included in the Budget, are Permanent Improvement Costs, and are covered by the Allowance; (ii) Tenant has completed and delivered to Landlord a request for payment, in form reasonably approved by Landlord, setting forth the name of the contractor, subcontractor or vendor paid and the date of payment, (iii) the request for payment is accompanied by the documentation set forth in Section 6.1; and (iv) Landlord, or Landlord's appointed representative, has inspected and approved the work for which Tenant seeks reimbursement.

6.3. Tenant shall provide Landlord with the aforementioned documents by the 15th of the month and payment shall be made by the 30th day of the month following the month in which such documentation is provided.

6.4. Prior to Landlord disbursing the Landlord's Retention to Tenant, Tenant shall submit to Landlord the following items within thirty (30) days after completion of the Tenant Work: (i) "As Built" drawings and specifications pursuant to Section 3.5 above, (ii) all unconditional lien releases from all general contractor(s) and subcontractor(s) performing work, (iii) a "Certificate of Completion" prepared by Tenant's Architect, and (iv) a final budget with supporting documentation detailing all costs associated with the Permanent Improvement Costs.

## 7. Changes, Additions or Alterations.

If Tenant desires to make any non-de minimis change, addition or alteration or desires to make any change, addition or alteration to any of the Building Systems after approval of the Issued for Construction Documents, Tenant shall prepare and submit to Landlord plans and specifications with respect to such change, addition or alteration. Any such change, addition or alteration shall be subject to Landlord's approval in accordance with the provisions of Section 3.2 of this Workletter. Tenant shall be responsible for any submission to and plan check and permit requirements of the applicable governmental authorities. Tenant

shall be responsible for payment of the cost of any such change, addition or alteration if it would increase the Budget and Excess Cost previously submitted and approved pursuant to Section 6 above.

8. Miscellaneous.

8.1. Scope. Except as otherwise set forth in the Lease, this Workletter shall not apply to any space added to the Premises by Lease option or otherwise.

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8.2. Tenant Work shall include (at Tenant' s expense subject to application of the Allowance towards the costs of such items) for all of the Premises:

- (a) Landlord approved lighting sensor controls as necessary to meet applicable Laws;
- (b) Building Standard fluorescent fixtures in all Building office areas;
- (c) Building Standard meters for each of electricity and chilled water used by Tenant shall be connected to the Building' s system and shall be tested and certified prior to Tenant' s occupancy of the Premises by a State certified testing company;
- (d) Building Standard ceiling systems (including tile and grid) and;
- (e) Building Standard air conditioning distribution and Building Standard air terminal units.

8.3. Sprinklers. Subject to any terms, conditions and limitations set forth herein, Landlord shall provide an operative sprinkler system consisting of mains, laterals, and heads "AS IS" on the date of delivery of the Premises to Tenant. Tenant shall pay for piping distribution, drops and relocation of, or additional, sprinkler system heads and Building firehose or firehose valve cabinets, if Tenant' s Plans and/or any applicable Laws necessitate such.

8.4. Floor Loading. Floor loading capacity shall be within building design capacity. Tenant may exceed floor loading capacity with Landlord' s consent, at Landlord' s sole discretion and must, at Tenant' s sole cost and expense, reinforce the floor as required for such excess loading.

8.5. Work Stoppages. If any work on the Real Property other than Tenant Work is delayed, stopped or otherwise affected by construction of Tenant Work, Tenant shall immediately take those actions necessary or desirable to eliminate such delay, stoppage or effect on work on the Real Property other than Tenant Work.

8.6. Life Safety. Tenant (or Contractor) shall employ the services of a fire and life-safety subcontractor reasonably satisfactory to Landlord for all fire and life-safety work at the Building.

8.7. Locks. Tenant may purchase locks, cylinders and keys for the Premises from its own vendor, provided that (a) such vendor and the locks, cylinders and keys to be used are subject to Landlord' s prior written approval; (b) of a make and model which are functional, operable and compatible with Landlord' s master key system; (c) a master key or keys are provided to Landlord, of which Landlord may place one such master key in the "knox box" for use by the fire department and emergency personnel in the event of an emergency and may retain another key for Landlord' s use for entry permitted under the Lease; and (d) the contact information for Tenant' s vendor for locks, cylinders and keys used in the Premises shall be provided to Landlord with Tenant' s request for approval.

8.8. Authorized Representatives. Tenant has designated David Quinn to act as Tenant' s representative with respect to the matters set forth in this Workletter. Such representative(s) shall have full authority and responsibility to act on behalf of Tenant as required in this Workletter. Tenant may add or delete authorized representatives upon five (5) business days notice to Landlord.

8.9. Access to Premises. After Landlord has recovered possession of the Premises from any prior Tenant, prior to delivery of possession to Tenant. Tenant and its architects, engineers, consultants, and contractors shall have access at reasonable times and upon advance notice and coordination with the Building management, to the Premises for the purpose of planning Tenant Work. Such access shall not in any manner interfere with Landlord Work, if any. Such access, and all acts and omissions in connection with it, shall be subject to and governed by all other provisions of the Lease, including, without limitation, Tenant' s indemnification obligations, insurance obligations, etc, except for the payment of Base Rent and Additional Rent. To the extent that such access by Tenant delays the Substantial Completion of the Landlord Work (if any), such delay shall be a Tenant Delay and the Landlord Work shall be deemed Substantially Complete on the date such Landlord Work would have been completed but for such access.

8.10. Fee. Landlord shall receive a fee equal to two percent (2.0%) of the Allowance for Landlord' s review and supervision of construction of the Tenant Work, which fee shall be paid by Landlord applying two percent (2.0%) of the Allowance in payment thereof. Such fee is in addition to Tenant' s reimbursement of costs incurred by Landlord pursuant to other provisions hereof, including, without limitation, for Landlord' s architects and engineers to review Tenant' s Plans.

## 9. Force and Effect.

The terms and conditions of this Workletter shall be construed to be a part of the Lease and shall be deemed incorporated in the Lease by this reference. Should any inconsistency arise between this Workletter and the Lease as to the specific matters which are the subject of this Workletter, the terms and conditions of this Workletter shall control.



## Exhibit C Site Plan Showing Project

Phase III, its Buildings & square footages are not a part of the Project as defined in this Lease, & are shown in this Exhibit for Illustration only.

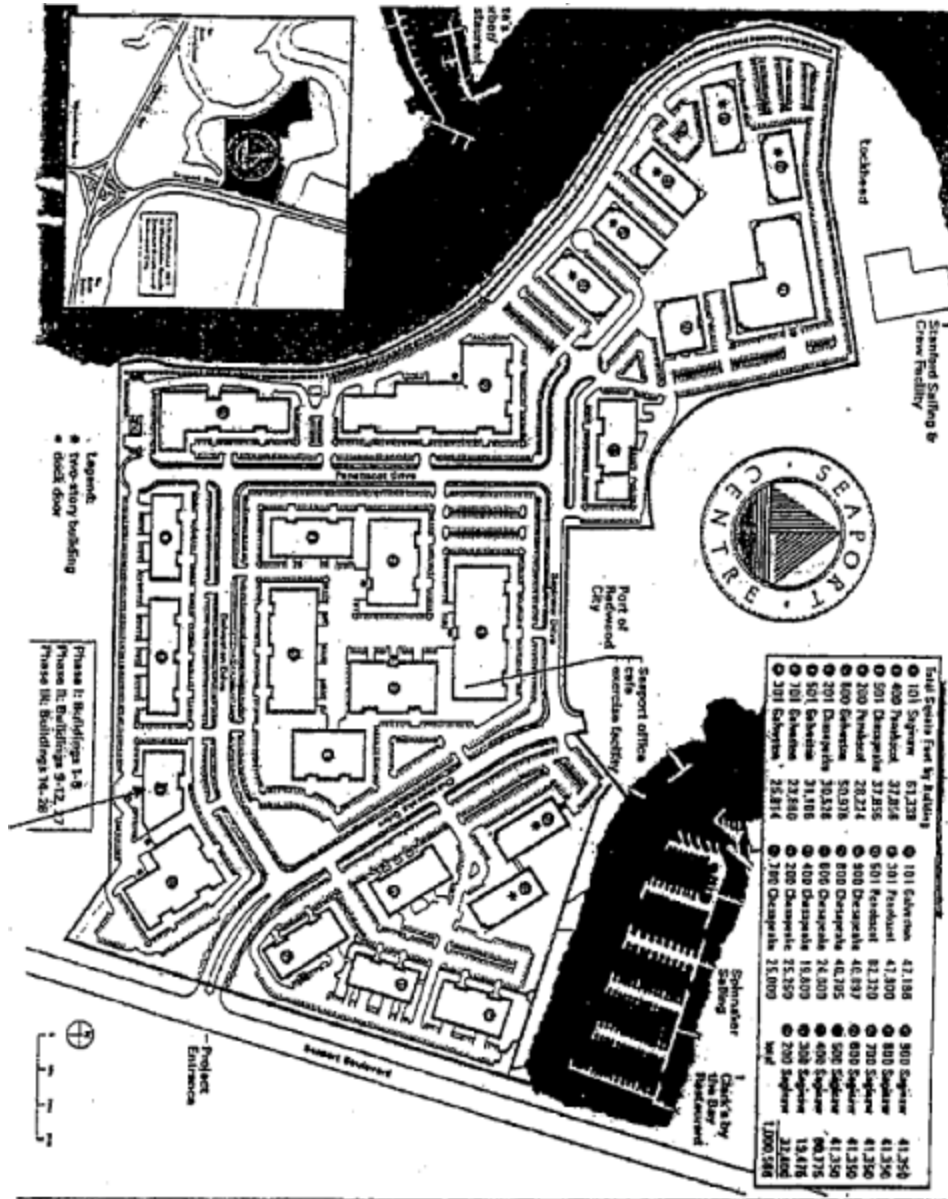




EXHIBIT D  
PERMITTED HAZARDOUS MATERIAL

Permitted Hazardous Material includes insignificant amounts of substances listed below so long as (i) such substances are maintained only in such quantities as are reasonably necessary for Tenant's operations in the Premises, or such other specific quantity limit as specified below, (ii) such substances are used, stored and handled strictly in accordance with the manufacturers' instructions, industry standards and all applicable laws, (iii) such substances are not disposed of in or about the Building or the Project in a manner which would constitute a release or discharge thereof, and (iv) all such substances are removed from the Building and the Project by Tenant no later than the Termination Date.

Type: \_\_\_\_\_ Quantity: \_\_\_\_\_

Substances typically found or used in general office applications, to the extent the Premises is used for general offices as noted above

HazMat Classification	Common Chemical or Trade Name	Tot.	Unit
CL-II	Combustible Liquid Acetic Acid	4	L
CL-II	Combustible Liquid Isoamyl Alcohol	1	L
CL-II;	Combustible Liquid; 1,3-Diaminopropane	2	L
CORR-L	Corrosive Liquid		
CL-II;	Combustible Liquid; Ethylenediamine	1	L
CORR-L	Corrosive Liquid		
CL-III A	Combustible Liquid Diethylpyrocarbonate	0.5	L
CL-III A	Combustible Liquid Dimethylsulfoxide	2	L
CL-III A	Combustible Liquid RNaseZap	3.5	L
CL-III A	Combustible Liquid Triethylamine/Acetate buffer	0.5	L
CORR-L	Corrosive Liquid Ammonium Hydroxide solution	0.5	L
CORR-L	Corrosive Liquid Bradford Reagent (protein dye reagent)	0.5	L
CORR-L	Corrosive Liquid Formic Acid	1	L
CORR-L	Corrosive Liquid Hydrochloric Acid	6	L
CORR-L	Corrosive Liquid N,N' -Dimethylethylenediamine	0.025	kg
CORR-L	Corrosive Liquid Phosphoric Acid	4	L
CORR-L	Corrosive Liquid RNaseZap wipes	1	kg
CORR-L	Corrosive Liquid Sodium Hydroxide solution	2	L
CORR-L	Corrosive Liquid Spermidine	0.5	kg
CORR-L	Corrosive Liquid Trifluoroacetic Acid	1	L
CORR-L;	Corrosive Liquid; Monoethanolamine	4	L
CL-III A	Combustible Liquid		
CORR-L; HI	Corrosive Liquid; Phenol/chloroform solution (TRizol)	6	L
TOX-L	Highly Toxic Liquid		
CORR-L; HI	Corrosive Liquid; Phenol	4	L
TOX-L; CL-III	Highly Toxic Liquid; Combustible Liquid		
CORR-S	Corrosive Solid Sodium Hydroxide, Pellets	2	kg
CORR-S	Corrosive Solid Tris(2-carboxyethyl)-phosphine hydrochloride	0.01	kg
CRYO	Cryogenic Solid Carbon Dioxide, solid	250	lbs
CRYO	Cryogenic Liquid Nitrogen, Liquid	400	L
FL-1B	Flammable Liquid Acetone	4	L
FL-1B	Flammable Liquid Acetonitrile	16	L
FL-1B	Flammable Liquid (±)-2-Butanol	2	L
FL-1B	Flammable Liquid Ethyl Alcohol, 70-100%, blends	150	L
FL-1B	Flammable Liquid Buffer RW1, Wash Buffer (guanidinium thiocyanate (2.5-10%); ethanol (2.5-10%)), Buffer Kit	1	L
FL-1B	Flammable Liquid Cytoseal XYL, Mounting Medium, Xylene-based	1	L
FL-1B	Flammable Liquid Eosin Y	0.05	kg
FL-1B	Flammable Liquid Eosin Y, 1% Alcoholic Solution	6	L
FL-1B	Flammable Liquid EZ-DeWax, Tissue Deparaffinization Solution, Ready-to-Use	1	L
FL-1B	Flammable Liquid Harris Hematoxylin	15	L

FL-IB	Flammable Liquid	Isopropyl Alcohol	20	L
FL-IB	Flammable Liquid	Methyl Alcohol	8	L
FL-IB	Flammable Liquid	Triethylamine	2.5	L
FL-IB	Flammable Liquid	Xylenes	50	L
FL-IC	Flammable Liquid	Isoamyl Acetate	1	L
FL-IC	Flammable Liquid	n-Butanol	2	L

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<b>HazMat Classification</b>		<b>Common Chemical or Trade Name</b>	<b>Tot.</b>	<b>Unit</b>
HI TOX-L	Highly Toxic Liquid	Chloroform	6	L
HI TOX-L	Highly Toxic Liquid	Chloroform/Isoamyl Alcohol (24:1)	1	L
HI TOX-L	Highly Toxic Liquid	Ethidium Bromide solution	0.1	L
HI TOX-L	Highly Toxic Liquid	Tetramethylammonium Chloride solution	2.5	L
HI TOX-S	Highly Toxic Solid	Sodium Azide	0.1	kg
NFG	Non-Flammable Compressed Gas	Air, Compressed Gas	2000	cu ft
NFG	Non-Flammable Compressed Gas	Carbon Dioxide, Compressed Gas	300	lbs
NFG	Non-Flammable Compressed Gas	Helium, Compressed Gas	450	cu ft
OXY-L	Oxidizing Liquid	Hydrogen Peroxide, <30%	0.1	L
OXY-L; CORR-L	Oxidizing Liquid; Corrosive Liquid	Bleach, Household (5-10% sodium hypochlorite)	20	L
OXY-L; CORR-L	Oxidizing Liquid; Corrosive Liquid	Nitric Acid	4	L
OXY-S	Oxidizing Solid	Sodium Perchlorate	1	kg
TOX-L	Toxic Liquid	1,4-Dithiothreitol	0.1	L
TOX-L	Toxic Liquid	Formalin, Neutral Buffered	10	L
TOX-L	Toxic Liquid	2-Mercaptoethanol	1	L
TOX-L	Toxic Liquid	Formamide	2	L
TOX-L	Toxic Liquid	N,N-Dimethylformamide	0.2	kg
TOX-S	Toxic Solid	Diethylenetriaminepentaacetic Acid	0.01	kg
TOX-S	Toxic Solid	Hexadecyltrimethylammonium Bromide	1	kg
TOX-S	Toxic Solid	Lithium Chloride	0.5	kg
TOX-S	Toxic Solid	o-Phenylenediamine	0.25	L
CL-II	Combustible Liquid	(+/-) – limonene	10	gallon

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EXHIBIT E  
FORM OF LETTER OF CREDIT ACCEPTABLE FROM SILICON VALLEY BANK

IRREVOCABLE STANDBY LETTER OF CREDIT NO. **SVBSF** \_\_\_\_\_

DATED: \_\_\_\_\_, **20** \_\_\_\_\_

BENEFICIARY:

**METROPOLITAN LIFE INSURANCE COMPANY**

REAL ESTATE INVESTMENTS

400 SOUTH EL CAMINO REAL, 8TH FLOOR

SAN MATEO, CA 94402

APPLICANT:

**GENOMIC HEALTH, INC.**

301 PENOBSCOT DRIVE

REDWOOD CITY, CA 94063

AMOUNT: **US\$150,995.00** (ONE HUNDRED FIFTY THOUSAND NINE HUNDRED NINETY-FIVE AND NO/100 U.S. DOLLARS)

EXPIRATION DATE: \_\_\_\_\_, 200\_\_\_\_\_

LOCATION: AT OUR COUNTERS IN SANTA CLARA, CALIFORNIA

DEAR SIR/MADAM:

WE HEREBY ESTABLISH THIS IRREVOCABLE STANDBY LETTER OF CREDIT IN FAVOR OF THE AFORESAID ADDRESSEE ("BENEFICIARY") FOR DRAWINGS UP TO US\$150,995.00 (ONE HUNDRED FIFTY THOUSAND NINE HUNDRED NINETY-FIVE AND NO/100 U.S. DOLLARS) EFFECTIVE IMMEDIATELY. THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT OUR OFFICE AT: 3003 TASMAN DRIVE, MAIL SORT HF210, SANTA CLARA, CA 95054 ATTENTION: GLOBAL FINANCIAL SERVICES – STANDBY LETTER OF CREDIT DEPARTMENT (THE BANK' S OFFICE), AND EXPIRES WITH OUR CLOSE OF BUSINESS ON \_\_\_\_\_, 200\_\_\_\_\_.

THE TERM "BENEFICIARY" INCLUDES ANY SUCCESSOR BY OPERATION OF LAW OF THE NAMED BENEFICIARY INCLUDING, WITHOUT LIMITATION, ANY LIQUIDATOR, REHABILITATOR, RECEIVER OR CONSERVATOR.

WE HEREBY UNDERTAKE TO PROMPTLY HONOR YOUR SIGHT DRAFT(S) DRAWN ON US, INDICATING OUR CREDIT NO. SVBSF \_\_\_\_\_, FOR ALL OR ANY PART OF THIS CREDIT IF PRESENTED AT OUR OFFICE SPECIFIED IN PARAGRAPH ONE ON OR BEFORE THE EXPIRY DATE OR ANY AUTOMATICALLY EXTENDED EXPIRY DATE TOGETHER WITH THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS, IF ANY.

EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY AGREEMENT, CONDITION OR QUALIFICATION. THE OBLIGATION OF SILICON VALLEY BANK UNDER THIS LETTER OF CREDIT IS THE INDIVIDUAL OBLIGATION OF SILICON VALLEY BANK, AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO AN EXPIRATION DATE WE NOTIFY YOU BY REGISTERED MAIL/COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD.

PARTIAL DRAWS ARE ALLOWED.

THIS ORIGINAL LETTER OF CREDIT MUST ACCOMPANY ANY DRAWINGS HEREUNDER FOR ENDORSEMENT OF THE DRAWING AMOUNT AND WILL BE RETURNED TO THE BENEFICIARY UNLESS IT IS FULLY UTILIZED.

THIS LETTER OF CREDIT MAY BE TRANSFERRED ONE OR MORE TIMES BUT IN EACH INSTANCE TO A SINGLE BENEFICIARY AND ONLY IN THE FULL AMOUNT AVAILABLE TO BE DRAWN UNDER THIS LETTER OF CREDIT. ANY SUCH TRANSFER MAY BE EFFECTED ONLY UPON PRESENTATION TO US, THE ISSUING BANK, AT THE BANK' S OFFICE SPECIFIED IN THE FIRST PARAGRAPH ABOVE, OF THE ATTACHED EXHIBIT "A" DULY COMPLETED AND EXECUTED BY THE BENEFICIARY AND ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENT(S), IF ANY. ANY TRANSFER OF THIS LETTER OF CREDIT MAY NOT CHANGE THE PLACE OF EXPIRATION OF THE LETTER OF CREDIT FROM OUR SPECIFIED OFFICE. EACH TRANSFER SHALL BE EVIDENCED BY OUR ENDORSEMENT ON THE REVERSE OF THE ORIGINAL LETTER OF CREDIT AND WE SHALL FORWARD THE ORIGINAL LETTER OF CREDIT SO ENDORSED TO THE

TRANSFEEE. EACH SUCH TRANSFER WILL BE EFFECTED AT NO COST TO THE BENEFICIARY OR TRANSFEEE. OUR TRANSFER FEE 1/4 OF 1% OF THE TRANSFER

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AMOUNT (MINIMUM US\$250.00) WILL BE FOR THE ACCOUNT OF THE APPLICANT. HOWEVER, ANY TRANSFER IS NOT CONTINGENT UPON APPLICANT' S ABILITY TO PAY OUR TRANSFER FEE.

DRAFT(S) AND DOCUMENTS MUST INDICATE THE NUMBER AND DATE OF THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 500 AND THE LAWS OF THE STATE OF NEW YORK AND, IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL. IF THIS CREDIT EXPIRES DURING AN INTERRUPTION OF BUSINESS AS DESCRIBED IN ARTICLE 17 OF SAID PUBLICATION 500, THE BANK HEREBY SPECIFICALLY AGREES TO EFFECT PAYMENT IF THIS CREDIT IS DRAWN AGAINST WITHIN 30 DAYS AFTER THE RESUMPTION OF BUSINESS.

***SILICON VALLEY BANK,***

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
AUTHORIZED SIGNATURE

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**EXHIBIT "A"**

DATE:

TO: SILICON VALLEY BANK  
3003 TASMAN DRIVE  
SANTA CLARA, CA 95054  
ATTN: GLOBAL FINANCIAL SERVICES

RE: SILICON VALLEY BANK, SANTA CLARA, CALIFORNIA  
IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVBSF \_\_\_\_\_  
DATED \_\_\_\_\_, 20\_\_\_\_ AMOUNT: US\$\_\_\_\_\_.

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

\_\_\_\_\_  
(NAME OF TRANSFEREE)

\_\_\_\_\_  
(ADDRESS)

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT UP TO ITS AVAILABLE AMOUNT AS SHOWN ABOVE AS OF THE DATE OF THIS TRANSFER.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE. TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED DIRECT TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH LETTER OF CREDIT IS RETURNED HERewith, AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECTLY TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

SINCERELY,  
**METROPOLITAN LIFE INSURANCE COMPANY**

\_\_\_\_\_  
(SIGNATURE OF BENEFICIARY)\*\*

\*\* THIS TRANSFER FORM, EXHIBIT "A", MUST BE NOTARIZED BY A NOTARY PUBLIC



EXHIBIT F  
FAIR MARKET RENTAL RATE

1. Definition of Fair Market Rental Rate. "Fair Market Rental Rate" shall mean the Monthly Base Rent equal to the monthly base rental per rentable square foot which a tenant would pay and which a willing landlord would accept for space comparable to the Premises in the Building and in other buildings of class A standards in Seaport Centre and along the Highway 101 corridor in Redwood City, Redwood Shores, San Carlos and Belmont ("Applicable Market") for the period for which such rental is to be paid and for a lease on terms substantially similar to those of the Lease (including, without limitation, those applicable to Taxes, Operating Expenses and exclusions, but also considering so-called net and triple net leases, and leases utilizing operating expense stops or base years, and making appropriate adjustment between such leases and this Lease, as described below), based on prevailing market conditions in the Building and in other buildings of class A standards in the Applicable Market at the time such determination is made ("Comparable Transactions"). Without limiting the generality of the foregoing, Comparable Transactions shall be for a term similar to the term of tenancy and for space comparable in use, floor levels, square footage and location within the Building and in other buildings of class A standards in the Applicable Market as the transaction for which Fair Market Rental Rate is being determined; however, leases of unusual or odd shaped spaces shall not be considered. In any determination of Fair Market Rental Rate, the stated or contract monthly net or base rental in Comparable Transactions shall be appropriately adjusted to take into account the different terms and conditions prevailing in such transactions and those present in the Lease, including, without limitation: (a) the extent to which average annual expenses and taxes per rentable square foot payable by tenants in Comparable Transactions vary from those payable by Tenant under the Lease, and so, for example, if the Lease provides for payment of Rent Adjustments and/or certain Operating Expenses on the basis of increases over a base year, then the rate of Monthly Base Rent under the Lease shall be based upon a step-up to change the calendar year which serves as the base year for calculation of the base for such Operating Expenses for the Option Term to be the full calendar year in which the Option Term commences, and such step-up shall be considered in the determination of the Fair Market Rental Rate; (b) tenant improvements, value of existing tenant improvements, the concessions, if any, being given by landlords in Comparable Transactions, such as parking charge abatement, free rent or rental abatement applicable after substantial completion of any tenant improvements (and no adjustment shall be made for any free or abated rent during any construction periods), loans at below-market interest rates, moving allowances, space planning allowances, lease takeover payments and work allowances, as compared to any tenant improvement, refurbishment or repainting allowance given to Tenant under the Lease for the space for which Fair Market Rental Rate is being determined; (c) the brokerage commissions, fees and bonuses payable by landlords in Comparable Transactions (whether to tenant's agent, such landlord or any person or entity affiliated with such landlord), as compared to any such amounts payable by Landlord to the broker(s) identified with respect to the transaction for which Fair Market Rental Rate is being determined; (d) the time value of money; (e) any material difference between the definition of rentable area and the ratio of project rentable to useable square feet in Comparable Transactions, as compared to such figures applicable to the space for which Fair Market Rental Rate is being determined; and (f) the extent to which charges for parking by tenants in Comparable Transactions vary from those payable by Tenant under the Lease.

2. Sealed Estimates. In the event the Lease requires Fair Market Rental Rate to be determined in accordance with this Exhibit, Landlord and Tenant shall meet within ten (10) business days thereafter and each simultaneously submit to the other in a sealed envelope its good faith estimate of Fair Market Rental Rate (the "Estimates"). If the higher Estimate is not more than one hundred five percent (105%) of the lower Estimate, then Fair Market Rental Rate shall be the average of the two Estimates. If such simultaneous submission of Estimates does not occur within such ten (10) business day period, then either party may by notice to the other designate any reasonable time within five (5) business days thereafter and any reasonable place at or near the Building for such meeting to take place. In the event only one party submits an Estimate at that meeting, such Estimate shall be Fair Market Rental. In the event neither party submits an Estimate at that meeting, the transaction for which Fair Market Rental Rate is being determined shall be deemed cancelled and of no further force or effect.

3. Selection of Arbitrators. If the higher Estimate is more than one hundred five percent (105%) of the lower Estimate, then either Landlord or Tenant may, by written notice to the other within five (5) business days after delivery of Estimates at the meeting, require that the disagreement be resolved by arbitration. In the event neither party gives such notice, the transaction for which Fair Market Rental Rate is being determined shall be deemed cancelled and of no further force or effect. Within five (5) business days after such notice, the parties shall select as arbitrators three (3) mutually acceptable independent MAI appraisers with experience in real estate activities, including at least five (5) years experience in appraising comparable space in the Applicable Market ("Qualified Appraisers"). If the parties cannot timely agree on such arbitrators, then within the following five (5) business days, each shall select and inform the other party of one (1) Qualified Appraiser and within a third period of five (5) business days, the two appraisers (or if only one (1) has been duly selected, such single appraiser) shall select as arbitrators a panel of three additional Qualified Appraisers, which three arbitrators shall proceed to determine Fair Market Rental Rate pursuant to Section 4 of this Exhibit. Both Landlord and Tenant shall be entitled to present evidence supporting their respective positions to the panel of three arbitrators.

4. Arbitration Procedure. Once a panel of arbitrators has been selected as provided above, then as soon thereafter as practicable each arbitrator shall select one of the two Estimates as the one which, in its opinion, is closer to Fair Market Rental Rate. Upon an Estimate's selection by two (2) of the arbitrators, it shall be the applicable Fair Market Rental Rate and such selection shall be binding upon Landlord and Tenant. If the arbitrators collectively determine that expert advice is reasonably necessary to assist them in determining Fair Market Rental Rate, then they may retain one or more qualified persons, including but not limited to legal counsel, brokers, architects or engineers, to provide such expert advice. The party whose Estimate is not chosen by the arbitrators shall pay the costs of the arbitrators and any experts retained by the arbitrators. Any fees of any counsel or expert engaged directly by Landlord or Tenant, however, shall be borne by the party retaining such counsel or expert.

Exhibit F – Page 1

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5. Rent Pending Determination of Fair Market Rental Rate. In the event that the determination of Fair Market Rental Rate has not been concluded prior to commencement of the applicable rental period for the applicable space for which the Fair Market Rental Rate is being determined, Tenant shall pay Landlord Monthly Base Rent and Rent Adjustment Deposits as would apply under Landlord' s Estimate pursuant to Section 2 of this Exhibit until the Fair Market Rental Rate is determined. In the event that the Fair Market Rental Rate subsequently determined is different from the amount paid for the applicable period, then within thirty (30) days after such determination, Tenant shall pay Landlord any greater amounts due and Landlord shall credit Tenant (against the next Monthly Base Rent installments due) for any reduction in the amounts due.

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EXHIBIT G  
TENANT' S PERSONAL PROPERTY

Tenant' s Personal Property shall mean the following items belonging to Tenant, it being acknowledged that if any of the following are affixed to the Premises in the normal manner for such item, it shall still be deemed to be Tenant' s Personal Property:

1. Water deionization/purification systems;
2. Facility vacuum system;
3. Facility clean dry air system;
4. Telecommunications systems;
5. Computer network systems;
6. Waste neutralization and monitoring systems;
7. Trash compactor system;
8. Satellite and/or radio frequency signal receivers/transmitters;
9. Compressed gas distribution system;
10. Audio-visual equipment;
11. Electronic security and monitoring systems;
12. Back-up and emergency electrical power equipment;
13. Laboratory casework including fume hoods;
14. Moveable benches and tables;
15. Office furniture and equipment;
16. Bicycle lockers;
17. Shower room lockers;
18. Laboratory equipment including autoclaves, glass washers, ice makers, cage washers, dryers, environmental chambers;
19. Servery equipment (i.e. equipment used in food service, in the break area or kitchen area)
20. Fermentation system equipment;
21. Such other items installed in the Premises by Tenant at Tenant' s expense during the term of the Lease as are agreed to in writing by Tenant and Landlord to be Tenant' s Personal Property.

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EXHIBIT H  
FORM OF LETTER OF CREDIT

FOR INTERNAL IDENTIFICATION PURPOSES ONLY

Our No. \_\_\_\_\_ Other \_\_\_\_\_

Applicant  
\_\_\_\_\_

TO: Metropolitan Life Insurance Company  
[Address]  
Attention: Director, EIM

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

We hereby establish this irrevocable Letter of Credit in favor of the aforesaid addressee ("Beneficiary") for drawings up to United States \$150,995.00 effective immediately. This Letter of Credit is issued, presentable and payable at our office at [issuing bank's address in either San Francisco or San Jose] and expires with our close of business on \_\_\_\_\_, 20\_\_\_\_\_.

The term "Beneficiary" includes any successor by operation of law of the named Beneficiary including, without limitation, any liquidator, rehabilitator, receiver or conservator.

We hereby undertake to promptly honor your sight draft(s) drawn on us, indicating our Credit No. \_\_\_\_\_, for all or any part of this Credit if presented at our office specified in paragraph one on or before the expiry date or any automatically extended expiry date.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [issuing bank] under this Letter of Credit is the individual obligation of [issuing bank], and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiry date hereof, or any future expiration date, unless at least thirty (30) days prior to an expiration date we notify you by registered mail that we elect not to consider this Letter of Credit renewed for any such additional period.

This Letter of Credit is transferable by the Beneficiary and by any successive transferees at no charge or cost to Beneficiary or any transferee. Transfers of this Letter of Credit are subject to receipt of Beneficiary's (and subsequently, transferee's) instructions in the form attached hereto as Schedule 1 accompanied by the original Letter of Credit and amendments(s) if any.

This Letter of Credit is subject to and governed by the Laws of the State of New York and the 1993 revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500) and, in the event of any conflict, the Laws of the State of New York will control. If this Credit expires during an interruption of business as described in article 17 of said Publication 500, the bank hereby specifically agrees to effect payment if this Credit is drawn against within 30 days after the resumption of business.

Very truly yours,

\_\_\_\_\_  
[issuing bank]

Exhibit H – Page 1

Schedule 1 to Letter of Credit

[Bank – then current issuer of Letter of Credit]

c/o \_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

Ladies & Gentlemen:

The undersigned acknowledges receipt of your advice No. \_\_\_\_\_ of a credit issued in our favor, the terms of which are satisfactory. We now irrevocably transfer the said credit and all amendments and extensions thereof, if any, to:

\_\_\_\_\_  
[Name of Transferee]

\_\_\_\_\_  
[Address]

You are to inform the transferee of this transfer and such transferee shall have sole rights as beneficiary under the credit, including any amendments, extension or increases thereof, without notice to or further assent from us.

This transfer is at no charge or cost to Beneficiary or the transferee.

Yours very truly,

Beneficiary

By: \_\_\_\_\_

Exhibit H – Page 2

RIDER 1  
COMMENCEMENT DATE AGREEMENT

Metropolitan Life Insurance Company, a New York corporation ("Landlord"), and Genomic Health, Inc., a Delaware corporation ("Tenant"), have entered into a certain Lease dated as of \_\_\_\_\_ (the "Lease").

WHEREAS, Landlord and Tenant wish to confirm and memorialize the Commencement Date and Expiration Date of the Lease as provided for in Section 2.02(b) of the Lease;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein and in the Lease, Landlord and Tenant agree as follows:

1. Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Lease.

2. The Commencement Date of the Term of the Lease is \_\_\_\_\_.

3. The Expiration Date of the Term of the Lease is \_\_\_\_\_.

4. Tenant hereby confirms the following:

- (a) That it has accepted possession of the premises pursuant to the terms of the Lease;
- (b) That the Landlord Work, if any, is Substantially Complete; and
- (c) That the Lease is in full force and effect.

5. Except as expressly modified hereby, all terms and provisions of the Lease are hereby ratified and confirmed and shall remain in full force and effect and binding on the parties hereto.

6. The Lease and this Commencement Date Agreement contain all of the terms, covenants, conditions and agreements between the Landlord and the Tenant relating to the subject matter herein. No prior other agreements or understandings pertaining to such matters are valid or of any force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Commencement Date Agreement and such execution and delivery have been duly authorized.

TENANT:

Genomic Health, Inc.,  
a Delaware corporation

By \_\_\_\_\_

\_\_\_\_\_  
Print name

Its \_\_\_\_\_

(Chairman of Board, President or Vice President)

By \_\_\_\_\_

\_\_\_\_\_  
Print name

Its \_\_\_\_\_

(Secretary, Assistant Secretary, CFO or Assistant Treasurer)

LANDLORD:

Metropolitan Life Insurance Company,  
a New York corporation

By \_\_\_\_\_

\_\_\_\_\_  
Print name

Its \_\_\_\_\_



RIDER 2  
ADDITIONAL PROVISIONS

This Rider 2 ("Rider") is attached to and a part of a certain Lease by and between Metropolitan Life Insurance Company, a New York corporation, as Landlord, and Genomic Health, Inc., a Delaware corporation (for purposes of this Rider, "Genomic"), as Tenant, for the Premises as described therein (the "Lease").

SECTION 1. DEFINED TERMS; FORCE AND EFFECT

Capitalized terms used in this Rider shall have the same meanings set forth in the Lease except as otherwise specified herein and except for terms capitalized in the ordinary course of punctuation. This Rider forms a part of the Lease. Should any inconsistency arise between this Rider and any other provision of the Lease as to the specific matters which are the subject of this Rider, the terms and conditions of this Rider shall control.

SECTION 2. PREMISES; CONDITION; DELIVERY; CONSTRUCTION PERIOD; COMMENCEMENT DATE

2.1. AS-IS Condition. Tenant hereby leases and Landlord shall deliver the Premises to Tenant in its AS IS condition, without any express or implied representations or warranties of any kind by Landlord, its brokers, manager or agents, or the employees of any of them regarding the Premises; and Landlord shall not have any obligation to construct or install any tenant improvements or alterations or to pay for any such construction or installation except to the extent of the Allowance, all as specifically provided in the Workletter. Any Tenant Work and Landlord Work, if any, shall be subject to and governed by the Workletter and other applicable provisions of this Lease.

2.2. Projected Delivery Date: Delivery Date: Commencement Date: Tenant's Obligations During Construction Period.

(a) Landlord shall tender to Tenant possession of the Premises in its AS IS condition described in Section 2.1 (but free of all prior occupants and their personal property) no later than 2 business days after execution of this Lease (the "Projected Delivery Date"). On the date Landlord actually tenders to Tenant possession of the Premises (the "Delivery Date"), the Premises shall be subject to, and Tenant shall observe and perform, all the conditions and covenants applicable to Tenant under this Lease, except as otherwise expressly provided in this Rider. During the period (the "Construction Period") from the Delivery Date until the Commencement Date, in recognition of Tenant's construction and installations in, and preparation of, the Premises for the use and occupancy permitted by this Lease, Tenant shall not be obligated to pay Monthly Base Rent, Rent Adjustment Deposits or Rent Adjustments. The Term of this Lease shall be as shown in Section 1.01(5) of the Basic Lease Provisions and the Commencement Date of the Term shall be the date set forth in Section 1.01(6) To the extent permitted by Law and that Tenant obtains any and all necessary approvals and permits for such use, during the Construction Period Tenant may use part of the Premises for the conduct of business by up to thirty (30) employees of Tenant without obligation to pay Monthly Base Rent for the space so used ("Temporary Space"), but Tenant shall be obligated to pay its pro rata share of Rent Adjustment Deposits and Rent Adjustment with respect to the Temporary Space based upon the number of square feet of Rentable Area of the Temporary Space to the Rentable Area of the Building, Phase and Project.

(b) Within thirty (30) days following the occurrence of the Commencement Date, upon request by Landlord or Tenant, Tenant and Landlord shall enter into an agreement (which is attached to this Lease as Rider 1) confirming the Commencement Date and the Expiration Date. If Tenant fails to enter into such agreement, then the Commencement Date and the Expiration Date shall be the dates designated by Landlord in such agreement.

(c) If Landlord shall be unable to give possession of the Premises on the Projected Delivery Date by reason of the following: (i) the holding over or retention of possession of any tenant, tenants or occupants, or (ii) for any other reason beyond Landlord's reasonable control, then Landlord shall not be subject to any liability for the failure to give possession on said date. Under such circumstances, the Commencement Date shall be delayed by a number of days equal to the days of delay in Landlord's delivery of possession to Tenant. No such failure to deliver possession on the originally scheduled Projected Delivery Date shall affect the validity of this Lease or the obligations of the Tenant hereunder.

SECTION 3. MONUMENT SIGNAGE.

(a) Grant of Right. Notwithstanding any provision of Section 6.06 of the Lease to the contrary, Tenant shall have the right to place Tenant identification on one line of the existing, exterior monument sign (located on Galveston Drive) for the Building, subject to the terms and conditions set forth in this Section ("Exterior Sign Right").

(b) General Conditions & Requirements. The size, type, style, materials, color, method of installation and exact location of the sign, and the contractor for and all work in connection with the sign, contemplated by this Section shall (i) be subject to Tenant's compliance with all applicable laws, regulations and ordinances and with any covenants, conditions and restrictions of record which affect the Property; (ii) be subject to Tenant's compliance with all requirements of Landlord's current Project signage criteria at the time of installation; (iii) be consistent with the design of the Building and the Project; (iv) be further subject to

Landlord's prior written consent. Tenant shall, at its sole cost and expense, procure, install, maintain in first class appearance and condition, and remove such sign.

(c) Removal & Restoration. Upon the expiration or termination of the Exterior Sign Right, but in no event later than the expiration of the Term or earlier termination of the Lease, Tenant shall, at its sole cost and

Rider 2 – Page 1

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expense, remove such sign and shall repair and restore the area in which the sign was located to its condition prior to installation of such sign.

(d) Right Personal. The Exterior Sign Right under this Section is personal to Genomic Health, Inc., and may not be used by, and shall not be transferable or assignable (voluntarily or involuntarily) to any person or entity.

#### SECTION 4. OPTION TO EXTEND.

(a) Landlord hereby grants Tenant a single option to extend the Term of the Lease for an additional period of five (5) years (such period may be referred to as the "Option Term"), as to the entire Premises as it then exists, upon and subject to the terms and conditions of this Section (the "Option To Extend"), and provided that at the time of exercise of such option (and each Option, if more than one Option is granted): (i) Tenant or a Permitted Transferee which has satisfied the requirements of Sections 10.01 and 10.05 of the Lease must be conducting regular, active, ongoing business in, and be in occupancy (and occupancy by a subtenant, licensee or other party permitted or suffered by Tenant shall not satisfy such condition) of the entire Premises; and (ii) there has been no material adverse change in Tenant's financial position from such position as of the date of execution of the Lease, as certified by Tenant's independent certified public accountants, and as supported by Tenant's certified financial statements, copies of which shall be delivered to Landlord with Tenant's written notice exercising its right hereunder. Without limiting the generality of the foregoing, Landlord may reasonably conclude there has been a material adverse change if Tenant's independent certified public accountants do not certify there has been no such change.

(b) Tenant's election (the "Election Notice") to exercise the Option To Extend must be given to Landlord in writing no earlier than the date which is twelve (12) months prior to the Expiration Date and no later than the date which is nine (9) months prior to the Expiration Date. If Tenant either fails or elects not to exercise the Option to Extend by not timely giving its Election Notice, then the Option to Extend shall be null and void, including, if more than one Option is granted, the then applicable Option to Extend and all further Options to Extend.

(c) The Option Term (and each Option Term, if more than one Option is granted) shall commence immediately after the expiration of the preceding Term of the Lease. Tenant's leasing of the Premises during the Option Term shall be upon and subject to the same terms and conditions contained in the Lease except that (i) Tenant shall pay the "Option Term Rent", defined and determined in the manner set forth in the immediately following Subsection; (ii) the Security shall be increased to an amount that is the same percentage or proportion of Option Term Rent as the prior amount of Security was in relation to Rent for the Term prior to the Option Term, but in no event shall the Security be decreased; and (iii) Tenant shall accept the Premises in its "as is" condition without any obligation of Landlord to repaint, remodel, repair, improve or alter the Premises or to provide Tenant any allowance therefor, except to the extent tenants leasing space in Comparable Transactions receive an allowance pursuant to the definition of Fair Market Rental Rate defined in Exhibit F hereto, provided, however, Landlord by notice given to Tenant within thirty (30) days after final determination of the Fair Market Rental Rate, may elect to provide, in lieu of such allowance for alterations to the Offer Space, a rent credit equal to the amount of the allowance that would have otherwise been given, credited toward the rents applicable only to the Offer Space and due starting after such rent obligation commences. If Tenant timely and properly exercises the Option To Extend, references in the Lease to the Term shall be deemed to mean the preceding Term as extended by the Option Term unless the context clearly requires otherwise.

(d) The Option Term Rent shall mean the sum of the Monthly Base Rent at the Fair Market Rental Rate (as defined in Exhibit F) plus Rent Adjustments and/or certain Operating Expenses (if applicable, based upon a step-up to change the base year or base amount for calculation of Operating Expenses in connection with determination of the Fair Market Rental Rate) plus other charges pursuant to the Lease payable to Landlord. The determination of Fair Market Rental Rate and Option Term Rent shall be made by Landlord, in the good faith exercise of Landlord's business judgment. Within forty-five (45) days after Tenant's exercise of the Option To Extend, Landlord shall notify Tenant of Landlord's determination of the Fair Market Rental Rate and Option Term Rent for the Premises. Tenant may, within fifteen (15) days after receipt thereof, deliver to Landlord a written notice either: (i) accepting Landlord's determination, in which case the extension shall be effective and binding (subject to Subsection (f) below) at the accepted rate; or (ii) setting forth Tenant's good faith estimate, in which case Landlord and Tenant will promptly confer and attempt to agree upon the Fair Market Rental Rate and Option Term Rent. Tenant's failure to timely deliver such notice within such fifteen (15) day period shall be deemed its cancellation of the Option. In the event Tenant has delivered notice setting forth Tenant's different estimate, but no agreement in writing between Tenant and Landlord on Fair Market Rental Rate and Option Term Rent is reached within thirty (30) days after Landlord's receipt of Tenant's estimate, the Fair Market Rental Rate shall be determined in accordance with the terms of Exhibit F. Notwithstanding any of the foregoing to the contrary, at no time during the Option Term shall the Option Term Rent be less than the "Preceding Rent" (defined below). The Preceding Rent shall mean the sum of the Monthly Base Rent payable by Tenant under this Lease calculated at the rate applicable for the last full month of the Term preceding the Option Term plus the Rent Adjustments payable by Tenant under the Lease (if applicable, using the base year for calculation of Base Operating Expenses applicable for the last full month of the Term preceding the Option Term), plus other charges pursuant to the Lease payable to Landlord. To the extent that Tenant pays directly the utility or service provider for utilities or services which Tenant is to obtain directly pursuant to the Lease, Tenant shall continue to pay such

amounts, but such amounts shall not be counted as part of the Preceding Rent or the Fair Market Rental Rate as used herein. Further, in the event that Landlord notifies Tenant that the Option Term Rent shall equal the Preceding Rent, such determination shall be conclusive and binding to set the Preceding Rent as the Option Term Rent for the Option Term, Tenant shall not be entitled to dispute or contest such determination, and the extension shall be effective and binding (subject to Subsection (f) below).

(e) Promptly after final determination of the Fair Market Rental Rate, Landlord shall prepare a memorandum confirming the specific dates, amounts and terms of the extension for the Option Term in

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accordance with the terms and conditions of this Option to Extend, in the form of an amendment to the Lease, and Tenant shall execute such amendment within five (5) business days after Landlord and Tenant agree to the form of the proposed amendment and Landlord shall execute it promptly after Tenant. Notwithstanding any of the foregoing to the contrary, the failure of Landlord to prepare such amendment or of either party to execute an amendment shall not affect the validity and effectiveness of the extension for the Option Term in accordance with the terms and conditions of this Option to Extend.

(f) Upon the occurrence of any of the following events, Landlord shall have the option, exercisable at any time prior to commencement of the Option Term, to terminate all of the provisions of this Section with respect to the Option to Extend, whereupon any prior or subsequent exercise of this Option to Extend shall be of no force or effect:

(i) Tenant' s failure to timely exercise or timely to perform the Option to Extend in strict accordance with the provisions of this Section.

(ii) The existence at the time Tenant exercises the Option to Extend or at the commencement of the Option Term of a Default on the part of Tenant under the Lease or of any state of facts which with the passage of time or the giving of notice, or both, would constitute such a Default.

(iii) Tenant' s third Default under the Lease prior to the commencement of the Option Term, notwithstanding that all such Defaults may subsequently be cured.

(g) Without limiting the generality of any provision of the Lease, time shall be of the essence with respect to all of the provisions of this Section.

(h) This Option to Extend is personal to Genomic Health and may not be used by, and shall not be transferable or assignable (voluntarily or involuntarily) to any person or entity other than a Permitted Transferee which is an assignee of the Lease and which has satisfied the requirements of Sections 10.01 and 10.05 of this Lease, and such Permitted Transferee may exercise the right without Tenant joining in or consenting to such exercise, and notwithstanding anything to the contrary, Tenant shall remain liable for all obligations under the Lease, including those resulting from any such exercise with the same force and effect as if Tenant had joined in such exercise.



**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-128805) pertaining to the 2005 Stock Incentive Plan and 2001 Stock Incentive Plan of Genomic Health, Inc. of our reports dated March 14, 2007, with respect to the consolidated financial statements of Genomic Health, Inc, Genomic Health, Inc' s management' s assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Genomic Health, Inc. included in the Annual Report (Form 10-K) for the year ended December 31, 2006.

/s/ Ernst & Young LLP

Palo Alto, California  
March 14, 2007





**Certification of the Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for the Period Ended  
December 31, 2006**

**CERTIFICATION**

I, Randal W. Scott, certify that:

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

Date: March 16, 2007

By: /s/ Randal W. Scott

Randal W. Scott, Ph.D.  
Chief Executive Officer



**Certification of the Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for the Period Ended  
December 31, 2006**

**CERTIFICATION**

I, G. Bradley Cole, certify that:

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

Date: March 16, 2007

By: /s/ G. Bradley Cole

G. Bradley Cole  
Chief Financial Officer



**STATEMENT OF CHIEF EXECUTIVE OFFICER UNDER 18 U.S.C. § 1350**

I, Randal W. Scott, the chief executive officer of Genomic Health, Inc. (the "Company"), certify for the purposes of section 1350 of chapter 63 of title 18 of the United States Code that, to the best of my knowledge,

- (i) the Annual Report of the Company on Form 10-K for the period ended December 31, 2006 (the "Report"), fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934, and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Randal W. Scott

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Randal W. Scott, Ph.D.

Chief Executive Officer

March 16, 2007



**STATEMENT OF CHIEF FINANCIAL OFFICER UNDER 18 U.S.C. § 1350**

I, G. Bradley Cole, the chief financial officer of Genomic Health, Inc. (the "Company"), certify for the purposes of section 1350 of chapter 63 of title 18 of the United States Code that, to the best of my knowledge,

(i) the Annual Report of the Company on Form 10-K for the period ended December 31, 2006 (the "Report"), fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934, and

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

/s/ G. Bradley Cole

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G. Bradley Cole  
Chief Financial Officer  
March 16, 2007