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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**Form 8-K**

**CURRENT REPORT**

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

Date of report (date of earliest event reported):

**December 17, 2008**

**PDL BioPharma, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation)

**000-19756**

(Commission File No.)

**94-3023969**

(I.R.S. Employer Identification No.)

**932 Southwood Boulevard**

**Incline Village, Nevada 89451**

(Address of principal executive offices)

Registrant's telephone number, including area code:

**(775) 832-8500**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement**

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

On April 10, 2008, PDL BioPharma, Inc. ("PDL" or "we") announced our intention to spin off our biotechnology operations into Facet Biotech Corporation ("Facet") apart from our antibody humanization patent and royalties assets which will remain with PDL (the "Spin-Off"). We transferred our biotechnology operations to Facet effective as of 11:59 pm on December 17, 2008 and, on December 18, 2008, made a pro rata distribution to our stockholders of record on December 5, 2008 of one share of Facet common stock for every five shares of PDL common stock. Our primary assets are now our antibody humanization patent and royalties assets, which consist of our Queen et al. patents and license agreements with numerous biotechnology and pharmaceutical companies pursuant to which we have licensed certain rights under our Queen et al. patents. Substantially all of our revenues will now be in the form of royalties derived from our license agreements relating to our Queen et al. patents and we will receive no revenues from the biotechnology operations which we transferred to Facet in connection with the Spin-Off. When market conditions warrant, we intend to explore means to monetize our royalties assets. We also will evaluate distributing our income, net of operating expenses, debt service and income taxes, to our stockholders.

In connection with the Spin-Off, on December 17, 2008, PDL and Facet entered into a Separation and Distribution Agreement (the "Separation Agreement"). The Separation Agreement identifies the assets transferred, liabilities assumed and contracts assigned to Facet as part of the Spin-Off, and describes when and how these transfers, assumptions and assignments will occur. In particular, all of the assets and liabilities associated or primarily used in connection with the biotechnology operations were transferred to Facet, including our intellectual property assets other than our Queen et al. patents. In addition, we entered into a Co-Tenancy Agreement and Lease Assignment and Assumption Agreement with Facet pursuant to which we assigned all of our rights and obligations under the property leases for the facilities located in Redwood City, California, which formerly served as our headquarters, to Facet, including the right to possess, use and occupy the leased property. See "Item 8.01. Other Events - I. Business Overview - Properties." We have moved our principal place of business to Incline Village, Nevada where we have leased office space. As a result, the primary assets and liabilities retained by us after the Spin-Off are our Queen et al. patents, our convertible notes and our leased office space in Nevada. In addition, in connection with the Spin-Off, we capitalized Facet with \$405 million in cash and assumed all current liabilities, with the exception of deferred revenue and the current portion of long-term debt, that were incurred by the biotechnology operations prior to the spin-off date. Except as expressly set forth in the Separation Agreement or any ancillary agreement, all assets were transferred to Facet on an "as is," "where is" basis. So long as we are in compliance with the terms of the Separation Agreement relating to the transfer, Facet will bear the economic and legal risks that any conveyance will prove to be insufficient to vest in Facet good title, free and clear of any security interest, that any necessary consents or government approvals are not obtained and that any requirements of laws or judgments are not

complied with. Except as otherwise provided in the Separation Agreement or any ancillary agreement, each party will release and forever discharge the other party from all liabilities existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Spin-Off. The releases will not extend to obligations or liabilities under any agreements between the parties that remain in effect following the Spin-Off pursuant to the Separation Agreement or any ancillary agreement. A copy of the Separation Agreement is attached hereto as Exhibit 10.1 and incorporated herein by reference. The foregoing description of the Separation Agreement is qualified in its entirety by reference to Exhibit 10.1.

On December 18, 2008, we also entered into a Transition Services Agreement with Facet pursuant to which Facet and we will provide each other with a variety of administrative services, including financial, tax, accounting, information technology, legal and human resources services, for a period of time of up to 36 months following the Spin-Off. We expect that most of these services will be provided within the first six months following the Spin-Off. In connection with the services performed under the Transition Services Agreement, each party shall pay \$125 per hour per person for time spent performing such services. A copy of the Transition Services Agreement is attached hereto as Exhibit 10.2 and incorporated herein by reference. The foregoing description of the Transition Services Agreement is qualified in its entirety by reference to Exhibit 10.2.

On December 18, 2008, we also entered into a Tax Sharing and Indemnification Agreement with Facet that will govern Facet's and our respective rights, responsibilities and obligations after the Spin-Off with respect to

taxes. Under the Tax Sharing and Indemnification Agreement, all tax liabilities (including tax refunds and credits) (1) attributable to our biotechnology operations for any and all periods or portions thereof ending prior to or on the spin-off date, (2) resulting or arising from the contribution of our biotechnology operations to Facet, the distribution of Facet's shares of common stock and the other separation transactions, and (3) otherwise attributable to us, will be borne solely by us. As a result, we generally expect to be liable for tax liabilities attributable to, or incurred with respect to, the biotechnology operations before the spin-off date and the separation transactions and Facet will be liable for tax liabilities attributable to, or incurred with respect to, the biotechnology business after the spin-off date. A copy of the Tax Sharing and Indemnification Agreement is attached hereto as Exhibit 10.3 and incorporated herein by reference. The foregoing description of the Tax Sharing and Indemnification Agreement is qualified in its entirety by reference to Exhibit 10.3.

On December 18, 2008, we also entered into a Cross License Agreement with Facet relating to our Queen et al. patents and certain other patents and know-how. Under the Cross License Agreement, we granted to Facet a royalty-free, development license to our Queen et al. patents and a royalty-bearing, commercialization license to our Queen et al. patents and Facet granted to us a royalty-free license under certain intellectual property Facet owns solely for the purposes of allowing us to perform and fulfill existing obligations that we have under certain agreements with third parties.

On December 18, 2008, we also entered into an Employee Matters Agreement with Facet which governs the employee benefit obligations of Facet and us as they relate to current and former employees, allocates liabilities and responsibilities relating to employee benefit matters that are subject to ERISA (other than severance plans) in connection with the Spin-Off, including the assignment and transfer of employees, and the establishment of a savings plan and a welfare plan.

#### **Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

(b) On December 18, 2008, in connection with the Spin-Off, the officers of PDL listed below, each of whom is an officer of Facet, were removed from their respective positions with us.

- Faheem Hasnain, President and Chief Executive Officer;
- Andrew Guggenhime, Senior Vice President and Chief Financial Officer;
- Mark McCamish, Senior Vice President and Chief Medical Officer; and
- Jaisim Shah, Senior Vice President and Chief Business Officer.

On December 18, 2008, in connection with the Spin-Off, the members of the Board of Directors of PDL listed below, each of whom is a member of the Board of Directors of Facet, resigned as directors of PDL.

- Brad Goodwin;
- Faheem Hasnain; and
- Gary Lyons.

(c) On December 18, 2008, in connection with the Spin-Off, John P. McLaughlin became the President and Chief Executive Officer of PDL and Christine Larson became the Vice President and Chief Financial Officer of PDL. Additional information regarding our engagement of and employment relationship with Mr. McLaughlin and Ms. Larson are set forth under Item 5.02 in the Current Report on Form 8-K we filed with the Securities and Exchange Commission on November 10, 2008 and December 18, 2008, respectively, which disclosures are incorporated herein by reference. See "- Item 8.01. Other Events - Executive Officers" and "- Directors" for additional information regarding our executive officers and directors after the Spin-Off.

#### **Item 8.01 Other Events**

We are providing the following information to describe certain aspects and expectations regarding our business, management and risk factors after the Spin-Off. Also, we provide in this current report certain pro forma

financial information regarding our post-Spin-Off operations. This information includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended. All statements other than statements of historical facts are "forward looking statements" for purposes of these provisions, including any projections of earnings, revenues or other financial items, any statements of the plans and objectives of management for future operations, any statements concerning proposed new licensing arrangements, any statements

regarding future economic conditions or performance, and any statement of assumptions underlying any of the foregoing. In some cases, forward-looking statements can be identified by the use of terminology such as “may,” “will,” “expects,” “plans,” “anticipates,” “estimates,” “potential,” or “continue” or the negative thereof or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements contained in this current report are reasonable, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct, and actual results could differ materially from those projected or assumed in the forward-looking statements. Our future business, financial condition and results of operations, as well as any forward-looking statements, are subject to inherent risks and uncertainties, including but not limited to the risk factors set forth below, and for the reasons described elsewhere in this current report. All forward-looking statements and reasons why results may differ included in this current report are made as of the date hereof, and we assume no obligation to update these forward-looking statements or reasons why actual results might differ. Unless otherwise indicated or the context otherwise requires, the terms “PDL,” “we,” “us” and “our” herein refer to PDL BioPharma, Inc. and its subsidiaries, after giving effect to the Spin-Off.

## I. BUSINESS OVERVIEW

### HISTORICAL OVERVIEW

We were organized as a Delaware corporation in 1986 under the name Protein Design Labs, Inc. In 2006, we changed our name to PDL BioPharma, Inc. We receive royalties and other revenues through agreements with numerous biotechnology and pharmaceutical companies pursuant to which we licensed to these companies rights to our proprietary antibody humanization technology platform. Since our inception in 1986, our operations have included the biotechnology operations, which we spun off to Facet in December 2008. Between March 2005 and March 2008, we also had commercial operations, which we divested in March 2008. In May 2008, we paid a special cash dividend of approximately \$506 million to our stockholders using proceeds from the sales of our commercial operations and an antibody manufacturing plant, which we also sold in March 2008.

In parallel with our Spin-Off preparations, we also had been evaluating opportunities to monetize our antibody humanization patent and royalties assets through a potential sale or securitization transaction. On November 6, 2008, we announced that we suspended that effort primarily due to market conditions, but would continue to evaluate whether such a transaction in the future is in the best interest of our stockholders. Any sale of our antibody humanization patent and royalties assets would decrease our revenues, while a securitization of our antibody humanization patent and royalties assets would increase our expenses as we would become obligated to make periodic principal and interest payments on any notes issued in connection with such securitization. When market conditions warrant, we intend to explore means to monetize our antibody humanization patent and royalties assets. We also will evaluate distributing our income, net of operating expenses, debt service and income taxes, to our stockholders.

Subsequent to the Spin-Off, we plan to have less than 10 employees who will manage efforts to support our intellectual properties, manage our licensing operations, provide for certain essential reporting and management functions of a public company and monetize our antibody humanization patents and royalties assets if market conditions permit. We have moved our principal place of business from Redwood City, California to Incline Village, Nevada. We intend to continue to operate as an independent, publicly traded Delaware company with corporate headquarters in Nevada.

## QUEEN ET AL. PATENTS

### General

We have been issued patents in the United States and elsewhere, covering the humanization of antibodies, which we refer to as our Queen et al. patents. Our Queen et al. patents, which generally expire in 2013 and 2014, cover, among other things, humanized antibodies, methods for humanizing antibodies, polynucleotide encoding in humanized antibodies and methods of producing humanized antibodies. The following is a list of our U.S. and European patents within our Queen et al. patent portfolio.

Application Number	Filing Date	Patent Number	Issue Date	Jurisdiction
08/477,728	06/07/95	5,585,089	12/17/96	United States
08/474,040	06/07/95	5,693,761	12/02/97	United States
08/487,200	06/07/95	5,693,762	12/02/97	United States
08/484,537	06/07/95	6,180,370	01/30/01	United States
09/718,998	11/22/00	7,022,500	04/04/06	United States
90903576.8	12/28/89	0 451 216	01/24/96	Europe
95105609.2	12/28/89	0 682 040	08/25/99	Europe

Our European Patent No. 0 451 216 (the “ ‘216 Patent”) and European Patent No. 0 682 040 (the “ ‘040 Patent”) expire in December 2009. We have applied for Supplemental Protection Certificates (“SPCs”) with respect to the Zenapax®, Herceptin®, Synagis®, Xolair®, Avastin®, Tysabri® and Lucentis® products in most of the jurisdictions in the European Union. These SPCs effectively extend the patent protection with respect to these products generally until December 2014, except that the SPCs for Zenapax, Herceptin and Synagis will generally expire in March 2013, July 2014 and August 2014, respectively. Because SPCs are granted on a jurisdiction-by-jurisdiction basis, the duration of the extension varies slightly in certain jurisdictions. We plan to file for SPCs on other humanized antibodies covered by our ‘216 or ‘040 patents, which are approved for marketing in Europe prior to the expiration of our ‘216 or ‘040 patents in December 2009. We will not be able to apply for any SPCs after December 2009. Therefore, if a product is first approved for marketing after December 2009 in a jurisdiction that issues SPCs, then we would not have any patent protection or SPC protection in this jurisdiction with respect to this product. We may still be eligible for royalties notwithstanding the unavailability of SPC protection if the relevant royalty-bearing humanized antibody product is also made, used, sold or offered for sale in or imported from a jurisdiction in which we have an unexpired Queen et al. patent (e.g., some of our patents issued outside of Europe, including in the United States, expire in December 2014).

We have entered into licensing agreements with numerous entities that are independently developing or have developed humanized antibodies pursuant to which we have licensed certain rights under our Queen et al. patents to make, use, sell, offer for sale and import humanized antibodies. In general, these agreements cover antibodies targeting antigens specified in the license agreements. Under most of our licensing agreements, we are entitled to receive a flat-rate royalty based upon our licensees’ net sales of covered antibodies. After the Spin-Off, we expect to continue to receive minimal annual maintenance fees from licensees of our Queen et al. patents.

## Licensing Agreements relating to Marketed Products

We currently receive royalties on sales of the nine humanized antibody products listed below, all of which are currently approved for use by the U.S. Food and Drug Administration (“FDA”) or other regulatory agencies outside the United States. In 2007 and the nine months ended September 30, 2008, we received approximately \$221.1 million and \$223.3 million, respectively, of royalty revenues under the license agreements with the entities identified below.

<u>Licensee</u>	<u>Product Name</u>
Genentech, Inc. (“Genentech”) (1)	<i>Avastin</i> <i>Herceptin</i> <i>Xolair</i> <i>Raptiva</i> ® <i>Lucentis</i>
MedImmune, LLC. (“MedImmune”)(2)	<i>Synagis</i>
Wyeth	<i>Mylotarg</i> ®
Elan Corporation, Plc (“Elan”)	<i>Tysabri</i>
Chugai Pharmaceutical Co., Ltd.	<i>Actemra</i> ®

(1) Our master patent license agreement with Genentech provides for a tiered royalty structure under which the royalty rate Genentech must pay on royalty-bearing products sold in the United States or manufactured in the United States and sold anywhere (“U.S.-based Sales”) in a given calendar year decreases on incremental U.S.-based Sales above several net sales thresholds. As a result, Genentech’s average annual royalty rate will decline as Genentech’s U.S.-based Sales increase during that year. Because we receive royalties in arrears, the average royalty rate for the payments we receive from Genentech in the second calendar quarter—which would be for Genentech’s sales from the first calendar quarter—has been and is expected to continue to be higher than the average royalty rate for following quarters. The average royalty rate for payments we receive from Genentech is lowest in the first calendar quarter, which would be for Genentech’s sales from the fourth calendar quarter, when more of Genentech’s U.S.-based Sales bear royalties at lower royalty rates. With respect to royalty-bearing products that are both manufactured and sold outside of the United States (“ex-U.S.-based Sales”), the royalty rate that we receive from Genentech is a fixed rate based on a percentage of the underlying ex-U.S.-based Sales. The mix of U.S.-based Sales and ex-U.S.-based Sales has fluctuated in the past and may continue to fluctuate in future periods.

(2) MedImmune is expected to launch its motavizumab product in the United States in 2009, should it receive marketing approval from the FDA. Motavizumab is a next-generation follow-on to Synagis for the treatment of respiratory syncytial virus. We believe that motavizumab falls within the scope of our 1997 Patent License Agreement with MedImmune (the “MedImmune Agreement”). On December 16, 2008, MedImmune filed a lawsuit against us in the United States District Court for the Northern District of California seeking a declaratory judgment that the U.S. Queen et al. patents are invalid and that therefore no royalties are owed on the Synagis product or motavizumab development product. See “Legal Proceedings and Other Matters.”

Pursuant to the terms of our cross-license agreement with Facet, Facet is obligated to pay us a portion of royalties it receives from Hoffman La-Roche (“Roche”) on sales of the Zenapax product under an agreement with Roche which was assigned to Facet in connection with the Spin-Off. Roche is obligated to pay Facet royalties only once product sales have reached a certain threshold. We have not received royalties on sales of Zenapax since the first quarter of 2006, and we do not expect to receive royalty revenue from Roche’s sales of Zenapax in the future.

In addition, we entered into a Patent License Agreement in October 2001 (the “UCB Agreement”), with Celltech Therapeutics Ltd which was acquired by UCB S.A. (“UCB”), which we believe covers UCB’s FDA-approved Cimzia® (certolizumab pegol) product. In September 2008, UCB informed us that it does not intend to pay us royalties on sales of Cimzia, which was launched outside the United States in September 2007 and in the United States in April 2008. UCB stated that it does not believe that Cimzia infringes our Queen et al. patents, and therefore that Cimzia does not fall within the scope of the UCB Agreement. Under the terms of the UCB Agreement, the question of whether Cimzia infringes our Queen et al. patents is the subject of a dispute resolution procedure which includes binding arbitration. See “Legal Proceedings and Other Matters.”

## Licensing Agreements relating to Non-Marketed Products

We have also entered into licensing agreements pursuant to which we have licensed certain rights under the Queen et al. patents to make and sell certain products in development that have not yet reached commercialization. Certain of these products in development are currently in Phase III clinical trials. With respect to these agreements, we expect to continue to receive minimal annual maintenance fees and, in future periods, we may receive milestone payments if the licensed products in development achieve certain development milestones and royalty payments if the licensed products receive marketing approval and generate sales.

## MAJOR CUSTOMERS

Genentech accounted for 70%, 68%, 60%, and 55% of our total revenues from continuing operations for the nine months ended September 30, 2008 and the years ended December 31, 2007, 2006 and 2005, respectively, and MedImmune accounted for 15%, 14%, 13% and 21% of our total revenues from continuing operations for the nine months ended September 30, 2008 and the years ended December 31, 2007, 2006 and 2005, respectively. After the Spin-Off, we expect our revenues to be comprised almost entirely of royalties, although we expect to continue to receive minimal annual maintenance fees from licensees of our Queen et al. patents and, in future periods, we may receive milestone payments if the licensed products in development achieve certain development milestones and royalty payments if the licensed products receive marketing approval and generate sales. After giving effect to the reclassification of Facet’s revenues to discontinued operations after the Spin-Off, we expect revenues from Genentech to account for 76%, 79%, 80% and 68% of our revenues from continuing operations for the nine months ended September 30, 2008 and the years ended December 31, 2007, 2006 and 2005, respectively, and revenues from MedImmune to account for 16%, 16%, 18% and 26% of our revenues from continuing operations for the nine months ended September 30, 2008 and the years ended December 31, 2007, 2006 and 2005, respectively.

## PROPERTIES

In July 2006, we entered into two leases (the “Leases”) and a sublease (the “Sublease”) for the facilities in Redwood City, California, which formerly served as our headquarters. Pursuant to amendments to the Leases entered into in connection with the Spin-Off (the “Lease Amendments”), Facet was added as a co-tenant under the Leases. As a co-tenant, Facet is bound by all of the terms and conditions of the Leases. PDL and Facet are jointly and severally liable for all obligations under the leases, including the payment of rental obligations. However, we also entered into a Co-Tenancy Agreement with Facet in connection with the Spin-Off and the Lease Amendments pursuant to which we assigned to Facet all rights under the Leases, including, but not limited to, the right to amend the leases, extend the lease term, or terminate the leases, and Facet assumed all of our obligations under the Leases. Pursuant to the Co-Tenancy Agreement, we also relinquished any right or option to regain possession, use or occupancy of these facilities. Facet agreed to indemnify us for all matters attributable to the period after the spin-off date. In addition, in connection with the Spin-Off, the Sublease was assigned by PDL to Facet.

In November 2008, we entered into a lease for 3,775 square feet of office space in Incline Village, Nevada which now serves as our corporate headquarters. This lease expires in May 2010, unless sooner terminated or extended.

## EMPLOYEES

Following the Spin-Off, we estimate that we will have less than 10 full-time employees to support our intellectual properties, manage our licensing operations, provide for certain essential reporting and management functions of a public company and manage efforts to monetize our antibody humanization patents and royalties assets if market conditions permit. We do not expect any of our employees to be covered by a collective bargaining agreement.

## LEGAL PROCEEDINGS AND OTHER MATTERS

### European Patent Oppositions

Two Queen et al. patents were issued to us by the European Patent Office, the ‘216 Patent and the ‘040 Patent. We are currently in two separate opposition proceedings with respect to these two patents. We intend to continue to vigorously defend our two European Queen et al. patents in these two proceedings, a description of which is set forth below.

#### Opposition to ‘216 Patent

In November 2003, in an appeal proceeding of a prior action of the Opposition Division of the European Patent Office, the Technical Board of Appeal of the European Patent Office ordered that certain claims in our ‘216 Patent be remitted to the Opposition Division for further prosecution and consideration of issues of patentability (entitlement to priority, novelty, enablement and inventive step). These claims cover the production of humanized

antibody light chains that contain amino acid substitutions made under our antibody humanization technology. In April 2007, at an oral proceeding, the Opposition Division upheld claims that are virtually identical to the claims remitted by the Technical Board of Appeal to the Opposition Division. The opponents in this opposition have the right to appeal this decision of the Opposition Divisions. If any of the opponents appeal the decision to the Technical Board of Appeal, the ‘216 Patent would continue to be enforceable during the appeal process. Two notices of appeal have since been filed by Boehringer Ingelheim GmbH and Celltech R&D Limited.

#### Opposition to ‘040 Patent

At an oral hearing in February 2005, the Opposition Division decided to revoke the claims in our ‘040 Patent. The Opposition Division based its decision on formal issues and did not consider substantive issues of patentability. We appealed the decision to the Technical Board of Appeal. The appeal suspended the legal effect of the decision of the Opposition Division during the appeal process. The Technical Board of Appeal has not scheduled a date for the appeal hearing with respect to the ‘040 Patent.

#### Patent Infringement Suit against Alexion

In March 2007, after the FDA’s market approval of Alexion’s Soliris® humanized antibody product, we filed a lawsuit against Alexion in the United States District Court for the District of Delaware for infringement of certain claims of United States Patent Number 5,693,761, United States Patent Number 5,693,762 and United States Patent Number 6,180,370 (collectively, the patents-in-suit), which are three of our Queen et al. patents. We are seeking monetary damages and other relief. The patent claims at issue in the litigation are a subset of the claims of our Queen et al. patents, and are not the only claims under which our licensees owe royalties. In June 2007, Alexion filed an answer denying that its Soliris product infringes the patents-in-suit, asserting certain defenses and counterclaiming for non-infringement and invalidity, and thereafter amended its answer to include a defense of unenforceability. In July 2008 the District Court issued a claim construction opinion. The pre-trial conference is currently scheduled for September 2009. We intend to continue to vigorously assert our rights under the patents-in-suit and defend against Alexion’s counterclaims.

#### Action for Declaratory Judgment of Patent Invalidity by MedImmune

On August 22, 2008, MedImmune sent to us a notice (the “2008 Notice”), purportedly under the MedImmune Agreement, that MedImmune was exercising its asserted rights under the MedImmune License Agreement to have a non-binding written determination made by non-conflicted legal counsel as to whether the Synagis product or motavizumab development product infringes claims under the Queen et al. patents. MedImmune and we mutually selected the non-conflicted legal counsel who would make such non-binding determination. On December 16, 2008, MedImmune filed a lawsuit against us in the United States District Court for the Northern District of California seeking a declaratory judgment that the U.S. Queen et al. patents are invalid and that therefore no royalties are owed on the Synagis product or motavizumab development product. We intend to vigorously defend against MedImmune’s claims and to assert our rights with respect to Synagis and motavizumab under the MedImmune Agreement. On December 18, 2008, as requested by MedImmune, MedImmune and we entered into an agreement pursuant to which the procedure to have such non-binding determination made by such non-conflicted legal counsel was terminated and we and MedImmune waived our obligations and rights with respect to the completion of the procedure initiated by the 2008 Notice. We and MedImmune have jointly instructed such non-conflicted legal counsel to cease work and not to render a written determination.

We previously disclosed that we expected to receive royalty revenues from UCB on sales of UCB's Cimzia product beginning in the third quarter of 2008. We believe that this royalty revenue is due under the UCB Agreement. Under that agreement, we have licensed UCB certain rights under our Queen et al. patents. On September 15, 2008, UCB informed us that it has taken the position that Cimzia does not infringe our Queen et al. patents and therefore does not intend to pay to us royalties on the Cimzia sales. We intend to continue to defend and enforce our rights under our Queen et al. patents, as well as our rights under the UCB Agreement.

## II. RISK FACTORS

On November 7, 2008, we filed our quarterly report on Form 10-Q, which included a section titled "Risk Factors," which set forth: (1) the risk factors related to PDL (pre-Spin-Off), (2) the risk factors related to PDL's antibody humanization royalty and licensing operations and to PDL as a separate entity after the completion of the Spin-Off and (3) the risk factors related to Facet. Set forth below are those risk factors that relate to PDL following the Spin-Off, as updated and amended in this Form 8-K.

You should carefully consider and evaluate all of the information included in this current report, including the risk factors listed below. Any of these risks, as well as other risks and uncertainties, could materially and adversely affect our business, results of operations and financial condition, which in turn could materially and adversely affect the trading price of shares of our common stock. Additional risks not currently known or currently material to us may also harm our business.

Keep these risk factors in mind when you read forward-looking statements contained in this current report. These statements relate to our expectations about future events and time periods. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "intends," "plans," "believes," "anticipates," "expects," "estimates," "predicts," "potential," "continue" or "opportunity," the negative of these words or words of similar import. Similarly, statements that describe our reserves and our future plans, strategies, intentions, expectations, objectives, goals or prospects are also forward-looking statements. Forward-looking statements involve risks and uncertainties, and future events and circumstances could differ significantly from those anticipated in the forward-looking statements.

### **Our antibody humanization patents, which are of significant value to us, are being challenged and a successful challenge or refusal to take a license could limit our future revenues.**

Two of our Queen et al. patents were issued to us by the European Patent Office, the '216 Patent and the '040 Patent. Eighteen notices of opposition to our '216 Patent and eight notices of opposition to our '040 Patent were filed by major pharmaceutical and biotechnology companies, among others, and we are currently in two separate opposition proceedings with respect to these two patents. An adverse decision in the pending European oppositions could have a material impact on our ability to collect royalties on European sales of our licensee's products manufactured outside the United States, and could encourage challenges to our related Queen et al. patents in other jurisdictions, including the United States. In addition, disputes with existing licensees could result in litigation in which the validity and/or enforceability of our Queen et al. patents could be challenged. We cannot assure you that we will be successful if the validity and/or enforceability of our Queen et al. patents are challenged for any reason. In the event of a final, nonappealable judgment that some or all of our Queen et al. patents are invalid or unenforceable, there is a substantial likelihood that one or more of our licensees will cease paying royalties under the terms of our existing license agreements. For example, on December 16, 2008, MedImmune filed a lawsuit against us in the United States District Court for the Northern District of California seeking a declaratory judgment that the U.S. Queen et al. patents are invalid and therefore no royalties are owed on the Synagis product or motavizumab development product. Although MedImmune has paid us royalties under the MedImmune Agreement with respect to sales of Synagis on a quarterly basis since the third quarter of 1998, we cannot assure you that MedImmune will continue to pay us royalties. Also, in September 2008, UCB informed us that it has taken the position that its Cimzia product does not infringe our Queen et al. patents and therefore does not intend to pay to us royalties under the UCB Agreement. We believe that UCB Agreement covers the Cimzia product. We intend to vigorously defend and enforce our rights under our Queen et al. patents and to enforce our rights under the UCB Agreement.

Our ability to maintain and increase our revenues from licensing our Queen et al. patents is dependent upon third parties maintaining their existing licensing arrangements, exercising rights under existing patent rights agreements and paying royalties under existing patent licenses with us. If we experience difficulty in enforcing our patent rights through licenses, or if our licensees, or prospective licensees, challenge our antibody humanization patents, or challenge whether particular existing or follow-on products are within the scope of our Queen et al. patents, and therefore not subject to royalty payments, our revenues and financial condition could be adversely affected, and we could be required to undertake additional actions, including litigation, to enforce our rights. Such efforts would increase our expenses and could be unsuccessful.

### **We derive a significant portion of our royalty revenues from a limited number of licensees and our future success depends on the ability of our licensees to obtain market acceptance for their products.**

Genentech accounted for 70%, 68%, 60%, and 55% of our total revenues from continuing operations for the nine months ended September 30, 2008 and the years ended December 31, 2007, 2006 and 2005, respectively, and MedImmune accounted for 15%, 14%, 13% and 21% of our total revenues from continuing operations for the nine months ended September 30, 2008 and the years ended December 31, 2007, 2006 and 2005, respectively. After the Spin-Off, we expect our revenues to be comprised almost entirely of royalties, although we expect to continue to receive minimal annual maintenance fees from licensees of our Queen et al. patents and, in future periods, we may receive milestone payments if the licensed products in development achieve certain development milestones and royalty payments if the licensed products receive marketing approval and generate sales. After giving effect to the reclassification of Facet's revenues to discontinued operations after the Spin-Off, we expect revenues from Genentech to account for 76%, 79%, 80% and 68% of our revenues from continuing operations for the nine months ended September 30, 2008 and the years ended December 31, 2007, 2006 and 2005, respectively, and revenues from MedImmune to account for 16%, 16%, 18% and 26% of our revenues from continuing operations for the nine months ended September 30, 2008 and the years ended December 31, 2007, 2006 and 2005, respectively. Our future success depends primarily upon the continued market acceptance of our licensee's commercialized products and the performance by our licensees of their obligations under the applicable license agreements. In addition, our ability to generate royalty revenue depends upon the ability of our licensees to develop, introduce and deliver products that achieve and sustain

market acceptance. We have no control over the sales efforts of our licensees, and our licensees might not be successful. Reductions in the sales volume or average selling price of licensed products could have a material adverse effect on our business.

**Our common stock may lose value due to several factors, including the expiration of our Queen et al. patents, the payment of dividends or distributions to our stockholders, failure to meet expectations and turnover in our investor base after the Spin-Off.**

After the Spin-Off, substantially all of our revenues will be in the form of royalties derived from our license agreements relating to our Queen et al. patents, which generally expire in 2013 and 2014. Shortly after the expiration of all of our Queen et al. patents, we will cease receiving patent-related royalties from our licensees and, as a result, our common stock may have little value. In addition to all of the risk factors listed herein, some other factors may also have a significant effect on the market price of our common stock, such as any payment of dividends or distributions to our stockholders and comments and expectations of results made by securities analysts.

If any of these factors causes us to fail to meet the expectations of securities analysts or investors, or if adverse conditions prevail or are perceived to prevail with respect to our business, the price of the common stock would likely drop significantly. A significant drop in the price of a company's common stock often leads to the filing of securities class action litigation against the company. This type of litigation against us could result in substantial costs and may lead to a diversion of management's attention and resources.

In addition, following the Spin-Off, we expect that there may be a significant amount of turnover in our investor base because those investors that have invested in us because of our biotechnology operations may divest following the Spin-Off. This turnover may have a significant effect on the market price of our common stock. Also, we expect that in connection with the distribution of shares of Facet common stock at the time of the Spin-Off, the market price of our common stock will decline by the value attributed to the shares of Facet common stock that we will distribute to our stockholders.

**We must protect our patent and other intellectual property rights to succeed.**

Our success is dependent in significant part on our ability to protect our patent and other intellectual property rights. The issuance, scope, enforceability and effective term of patents can be highly uncertain and often involve complex legal and factual questions and proceedings. Patents, if issued, may be challenged, invalidated, circumvented or rendered unenforceable. The issuance of a patent is not conclusive as to its validity or its enforceability. U.S. patents and patent applications may also be subject to interference proceedings, U.S. patents may be subject to reexamination or reissue proceedings in the U.S. Patent and Trademark Office, or PTO, and

foreign patents may be subject to opposition or comparable proceedings in corresponding foreign patent offices. These proceedings could result in either loss of the patent or denial of the patent application or loss or reduction in the scope of one or more of the claims of the patent or patent application. In addition, such interference, reexamination, reissue and opposition proceedings may be costly. Furthermore, no consistent policy has emerged regarding the breadth of claims in biotechnology patents, so that even issued patents may later be modified or revoked by the relevant patent authorities or courts. These proceedings could be expensive, last several years and result in a significant reduction in the scope or invalidation of our patents. Any limitation in claim scope could reduce our ability to negotiate or collect royalties based on these patents. Moreover, the issuance of a patent in one country does not assure the issuance of a patent with similar claim scope in another country, and claim interpretation and infringement laws vary among countries, so we are unable to predict the extent of patent protection in any country. See "Legal Proceedings and Other Matters."

**Our licensees may be unable to maintain regulatory approvals for currently licensed products or obtain regulatory approvals for new products. Safety issues could also result in the failure to maintain regulatory approvals or decrease revenues.**

Our licensees are subject to stringent regulation with respect to product safety and efficacy by various international, federal, state, and local authorities. Of particular significance are the FDA's requirements covering R&D, testing, manufacturing, quality control, labeling, and promotion of drugs for human use. As a result of these requirements, the length of time, the level of expenditures, and the laboratory and clinical information required for approval of a BLA or NDA are substantial and can require a number of years. In addition, even if our licensees' products receive regulatory approval, they remain subject to ongoing FDA regulations, including, for example, obligations to conduct additional clinical trials or other testing, changes to the product label, new or revised regulatory requirements for manufacturing practices, written advisements to physicians, and/or a product recall or withdrawal. Our licensees may not maintain necessary regulatory approvals for their existing licensed products or our licensees may not obtain necessary regulatory approvals on a timely basis, if at all, for any of the licensed products our licensees are developing or manufacturing. The occurrence of adverse events reported by any licensee may result in the revocation of regulatory approvals or decreased sales of the applicable product due to a change in physician's willingness to prescribe, or patient's willingness to use, the applicable product. In either case, our revenues could be materially and adversely affected. For example, in February 2005, Biogen Idec and Elan announced that they had voluntarily suspended the marketing and commercial distribution of the Tysabri antibody, a drug approved to treat multiple sclerosis and which is licensed under our humanization patents, because Biogen Idec and Elan had received reports of cases of progressive multifocal leukoencephalopathy ("PML"), a rare and frequently fatal, demyelinating disease of the central nervous system, in certain patients treated with Tysabri antibody. In July 2006, Biogen Idec and Elan reintroduced the Tysabri antibody, however, the Tysabri antibody's label now includes prominent warnings regarding the Tysabri antibody's risks and Biogen Idec and Elan implemented a risk management plan to inform physicians and patients of the benefits and risks of Tysabri antibody treatment and to minimize the risk of PML potentially associated with Tysabri antibody monotherapy. In July 2008, Biogen Idec and Elan announced two new cases of PML in patients treated with the Tysabri antibody. As a result, if physicians prescribe Tysabri less frequently due to the PML risk, or if Biogen Idec and Elan suspend the marketing and commercial distribution of the Tysabri antibody, either voluntarily or mandated by a regulatory agency such as the FDA, the amount of royalties we receive will be adversely affected. In addition, the current regulatory framework could change or additional regulations could arise at any stage during our licensees' product development or marketing, which may affect our licensee's ability to obtain or maintain approval of their licensed products. Delays in our licensees receiving regulatory approval for licensed products, or their failure to maintain existing regulatory approvals, could have a material adverse effect on our business.

**We must attract, retain and integrate key employees in order to succeed. It may be difficult to recruit, retain and integrate key employees after the Spin-Off.**

To be successful, we must attract, retain and integrate qualified personnel. After the Spin-Off, our only remaining business will be our antibody humanization patents and royalties assets and we expect to have less than 10 employees, which may make it difficult for us to recruit and retain qualified personnel. If we are unsuccessful in attracting, retaining and integrating qualified personnel, particularly at the management level, our business could be impaired.

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**Our agreements with Facet may not reflect terms that would have resulted from arm's-length negotiations between unaffiliated third parties.**

The agreements related to the Spin-Off, including the separation and distribution agreement, tax sharing and indemnification agreement, transition services agreement and cross license agreement, were negotiated in the context of the Spin-Off while Facet is still part of PDL and, accordingly, may not reflect more favorable terms that may have resulted from arm's-length negotiations between unaffiliated third parties.

**We may not be able to collect on indemnification rights from Facet.**

Under the terms of the separation and distribution agreement with Facet, we and Facet agreed to indemnify the other from and after the Spin-Off with respect to certain indebtedness, liabilities and obligations that were retained by our respective companies. These indemnification obligations could be significant. The ability to satisfy these indemnities if called upon to do so will depend upon the future financial strength of each of our companies. We cannot assure you that, if Facet has to indemnify us for any substantial obligations, Facet will have the ability to satisfy those obligations. If Facet does not have the ability to satisfy those obligations, we may be required to satisfy those obligations instead. For example, If Facet does not have the ability to pay monthly rent and other expenses related to the real property leases for Facet's corporate headquarters in Redwood City, California consisting of approximately 450,000 square feet of office and lab space, we will be required to pay such amounts, which could have a material adverse effect on the amount or timing of any distribution to our stockholders. See "- I. Business Overview - Properties."

**Our licensees face competition.**

Our licensees face competition from other pharmaceutical and biotechnology companies. The introduction of new competitive products or follow-on biologics may result in lost market share for our licensees, reduced utilization of licensed products, lower prices, and/or reduced licensed product sales, any of which could reduce our royalty revenue and have a material adverse effect on our results of operation.

**Decreases in third-party reimbursement rates may affect sales of licensed products.**

Sales of our licensees' products will depend significantly on the extent to which reimbursement for the cost of licensed products and related treatments will be available to physicians and patients from U.S. and international government health administration authorities, private health insurers, and other organizations. Decreases in third-party reimbursement for our licensees' products could reduce usage and sales of the products, and may have a material adverse effect on our business.

**Our revenues and operating results will likely fluctuate in future periods.**

Our antibody humanization royalty revenues may be unpredictable and fluctuate since they depend upon, among other things, the seasonality and rate of growth of sales of licensed products and the mix of U.S.-based Sales and ex-U.S.-based Sales in connection with our master patent license agreement with Genentech.

Our master patent license agreement with Genentech provides for a royalty fee structure that has four tiers, under which the royalty rate Genentech must pay on royalty-bearing products sold in the United States or manufactured in the United States and sold anywhere in a given calendar year decreases on incremental U.S.-based Sales above the net sales thresholds. As a result, Genentech's average annual royalty rate declines as Genentech's U.S.-based Sales increase. With respect to Genentech's royalty-bearing products that are both manufactured and sold outside of the United States, the royalty rate that we receive from Genentech is a fixed rate based on a percentage of the underlying ex-U.S.-based Sales. The mix of U.S.-based Sales and ex-U.S.-based Sales and the manufacturing location are outside of our control and have fluctuated in the past and may continue to fluctuate in future periods.

We have received a significant portion of our royalty revenues from sales of Synagis, which is marketed by MedImmune. This product has significantly higher sales in the fall and winter, which to date have resulted in much higher royalties paid to us in our first and second quarters than in other quarters. The seasonality of Synagis sales is

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expected to continue to contribute to fluctuation in our revenues from quarter to quarter. In December 2008, MedImmune filed a lawsuit against us in the United States District Court for the Northern District of California seeking a declaratory judgment neither Synagis nor motavizumab infringe the Queen et al. patents and therefore are not subject to royalties pursuant to the MedImmune Agreement. Although MedImmune has paid us royalties under the MedImmune Agreement with respect to sales of Synagis product on a quarterly basis since the third quarter of 1998, we cannot assure you that MedImmune will continue to pay us royalties. See "Legal Proceedings and Other Matters."

**We may reserve from time to time a certain amount of cash in order to satisfy the obligations relating to our convertible notes, which could adversely affect the amount or timing of any distribution to our stockholders.**

On a pro forma basis as of September 30, 2008, after giving effect to the Spin-Off, we expect to have approximately \$501.6 million in total long-term liabilities outstanding, comprised primarily of \$250.0 million in principal that remains outstanding under our 2.00% Convertible Senior Notes due February 15, 2012 (the "2012 Notes") and \$250.0 million in principal that remains outstanding under our unsecured 2.75% Convertible Subordinated Notes due 2023 (the "2023 Notes"). Holders of the 2023 Notes may require us to repurchase all or a portion of their 2023 Notes at 100% of their principal amount, plus any unpaid interest, on August 16, 2010, August 16, 2013 and August 16, 2018, and upon the occurrence of a repurchase event (as defined in the indenture). Similarly, holders of the 2012 Notes may require us to purchase all or any portion of their 2012 Notes at 100% of their principal amount, plus any unpaid interest, upon a fundamental change (as defined in the indenture). We may reserve from time to time a certain amount of cash in order to satisfy these repurchase or other obligations, including the payment of principal and interest, relating to the 2023 Notes and 2012 Notes, which could adversely affect the amount or timing of any distribution to our stockholders.



**The conversion of any of the outstanding 2023 Notes or 2012 Notes into shares of our common stock would have a dilutive effect, which could cause our stock price to go down.**

The 2023 Notes and 2012 Notes are convertible, at the option of the holder, into shares of our common stock at varying conversion rates. We have reserved shares of our authorized common stock for issuance upon conversion of the 2023 Notes and 2012 Notes. If any or all of the 2023 Notes or 2012 Notes are converted into shares of our common stock, our existing stockholders will experience immediate dilution and our common stock price may be subject to downward pressure. If any or all of the 2023 Notes or 2012 Notes are not converted into shares of our common stock before their respective maturity dates, we will have to pay the holders of such notes the full aggregate principal amount of the 2023 Notes or 2012 Notes, respectively, then outstanding. Such payments could have a material adverse effect on our cash position.

In connection with the Spin-Off, the conversion rates of the 2023 Notes have been adjusted upward and that of the 2012 Notes will be adjusted upward. Currently, the conversion rate for the 2023 Notes is 114.153 shares per \$1,000 principal amount of 2023 Notes (or a conversion price of approximately \$8.76 per share) and the conversion rate for the 2012 Notes is 61.426 shares per \$1,000 principal amount of 2012 Notes (or a conversion price of approximately \$16.28 per share). For the 2023 Notes, the conversion rate has been increased by multiplying the previous conversion rate by a fraction, the numerator of which was the average pre-Spin-Off closing price of our common stock for the ten consecutive trading days immediately preceding the record date for the Spin-Off, and the denominator of which was the difference of such average closing price and the fair market value of Facet's common stock applicable to one share of our common stock as determined by our board of directors. The adjusted conversion rate for the 2023 Notes became effective on the business day immediately following the record date for the Spin-Off. Such adjustment resulted in an increased number of shares of our common stock issuable to the holders of the 2023 Notes upon conversion. For the 2012 Notes, the conversion rate will be increased by multiplying the current conversion rate by an adjustment factor equal to the sum of the daily adjustments for each of the ten consecutive trading days beginning on the effective date of the Spin-Off. The daily adjustment for each such trading day is a fraction, the numerator of which is the sum of the closing price of our common stock and the closing price of Facet's common stock applicable to one share of our common stock, and the denominator of which is the product of ten and the closing price of our common stock. The adjusted conversion rate for the 2012 Notes will become effective on the tenth trading day from, and including, the effective date of the Spin-Off. We expect such adjustment to result in an increased number of shares of our common stock issuable to the holders of the 2012 Notes upon conversion. Because the conversion rates of the 2023 Notes has been adjusted upward and that of the 2012

13

Notes will be adjusted upward in connection with the Spin-Off, our existing stockholders will experience more dilution if any or all of the 2023 Notes or 2012 Notes are converted into shares of our common stock after the adjusted conversion rates become effective.

**Upon our distribution of the common stock of Facet, we could be required to utilize some or all of our net operating loss and tax credit carryforwards and, if such carryforwards are fully utilized, we could incur a current tax liability.**

We could recognize taxable gain upon our distribution of the common stock of Facet, which generally would occur if the gross fair market value of the distributed assets exceeds our tax basis. If we were to recognize a taxable gain in connection with such distribution, we would need to utilize some or all of our net operating loss and tax credit carryforwards, which would reduce the amount of such carryforwards available to reduce our tax liability in future years and increase our current tax liability. We do not expect the Spin-Off to result in our recognition of a material amount of taxable gain due to our estimate of the fair market value of the distributed assets and our significant tax basis in such assets and, if we do recognize taxable gain in connection with the Spin-Off, we do not expect to incur a material current tax liability. Nevertheless, our estimate of the fair market value of the distributed assets may be significantly less than the ultimate valuation of such assets and, as a result, we could be required to utilize some or all of our net operating loss and tax credit carryforwards and, if such carryforwards are fully utilized, our current tax liability could increase. The investors are urged to consult their tax advisor with respect to the specific tax consequences of the Spin-Off including the effects of U.S. federal, state and local, and foreign and other tax rules, and the effect of possible changes in tax laws.

### III. DISCUSSION REGARDING RESULTS OF OPERATIONS AND FINANCIAL POSITION

The following discussion is meant to provide information regarding what we expect our results of operations and financial condition will look like following the Spin-Off. Our historical financial statements that we have previously filed with the SEC are not a good indication for our ongoing financial operating results due to the strategic review and repositioning process that has been ongoing over the past six quarters, which resulted in the sale of our commercial operations and antibody manufacturing plant during the first quarter of 2008, a restructuring and significant reductions in workforce, as well as the Spin-Off of our biotechnology operations in December 2008. In addition, although we have prepared pro forma financial statements of operations for the annual 2007 period and for the nine months ended September 30, 2008 and a pro forma balance sheet as of September 30, 2008 (included in Exhibit 99.1 to this Form 8-K), these pro forma financial statements only reflect the elimination of Facet's financial results from PDL's financial results and do not reflect what PDL's historical financial statements would have been given all of the other changes in our business; that is, they do not include adjustments to eliminate the high level of event-driven expenses we have incurred over the past six quarters related to the sale of certain of our former key assets and changes in our business strategy or adjustments to reflect our forward-looking, downsized cost structure.

You should read the following discussion in conjunction with the consolidated financial statements and accompanying notes included in our Annual Report on Form 10-K for the year ended December 31, 2007, filed with the SEC, the condensed consolidated financial statements and accompanying notes included in our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008, filed with the SEC, and the Unaudited Pro Forma Condensed Financial Information included in Exhibit 99.1 to this Form 8-K.

In addition, you should note that commencing with our Annual Report on Form 10-K for the year ended December 31, 2008 to be filed during the first quarter of 2009, we will reflect the financial results of our former biotechnology operations as discontinued operations.

#### Revenues

Prior to the Spin-Off, we recognized royalty revenues as well as license, collaboration and other revenues. During 2006, 2007 and 2008, our royalty revenues were comprised almost entirely of royalties earned on sales of products under license agreements for our Queen et al. patents. Over this same time period, our license, collaboration and other revenues consisted of revenues under collaboration agreements as well as maintenance fees and milestone payments from licensees under our patent license agreements.

After the Spin-Off, we expect our revenues to be comprised almost entirely of royalties, although we expect to continue to receive minimal annual maintenance fees from licensees of our Queen et al. patents and, in future periods, we may receive milestone payments if the licensed products in development achieve certain development milestones and royalty payments if the licensed products receive marketing approval and generate sales. After we reclassify certain license, collaboration and other revenues related to our biotechnology operations as discontinued operations, we expect that royalties will represent more than 98% of our revenues from continuing operations over the past three years.

Prior to the Spin-Off, we had two active collaboration agreements: one with Biogen Idec and one with Bristol-Myers Squibb Company. Since these collaboration agreements related to our biotechnology operations, they were assigned to Facet in connection with the Spin-Off and, therefore, Facet assumed all obligations under these agreements and will recognize all collaboration-related revenues in future periods. In addition, certain of our former license agreements were assigned to Facet, so Facet will receive any potential future milestone and royalty revenues under these agreements. We will not recognize revenues under any of these agreements in future periods, and the revenues that we had recognized under these agreements in historical periods will be reflected as discontinued operations in future SEC filings.

### Operating Expenses

Prior to the Spin-Off and over the past six quarters, we incurred a high level of general and administrative expenses related to activities that were non-recurring in nature and which we do not expect to continue in future periods. Such historical activities, which resulted in higher legal expenses as well as higher third-party consulting and advisory fees in 2007 and 2008, included the following:

- A strategic review process that we initiated during 2007, which included the exploration of the sale of our entire company and our key assets;
- The sale of our former commercial operations in the first quarter of 2008;
- The sale of our former antibody manufacturing plant in the first quarter of 2008;
- Royalty monetization efforts until suspended in November 2008; and
- The Spin-Off of our former biotechnology operations on December 18, 2008.

Our pro forma statements of operations for the 2007 annual period and for the nine months ended September 30, 2008 represent our financial operating results assuming that we had spun off the biotechnology operations on January 1, 2007. While general and administrative expenses in these pro forma statements of operations exclude certain direct expenses that were allocated to the biotechnology operations of Facet, they do include a portion of expenses in support of the strategic initiatives listed above. In future periods, we do not expect to incur these types of expenses, although we may incur additional expenses if we decide to recommence our royalty monetization efforts.

Going forward, we expect that our operating expenses will be comprised primarily of general and administrative expenses, which consist of costs of personnel, professional services, consulting and other expenses related to our administrative functions, facility and overhead costs and stock-based compensation expense accounted for under Statement of Financial Accounting Standards ("SFAS") 123(R) as a component of personnel-related costs. While we expect to continue to incur ongoing litigation-related expenses, we expect that our operating expenses will decrease significantly relative to recent historical levels due to the completion of the strategic review process that we undertook beginning in the second quarter of 2007 and the subsequent sales and spin-off of certain of our former key assets as listed above. In addition, going forward, we will have less than 10 employees who will manage efforts to support our intellectual properties, manage our licensing operations, provide for certain essential reporting and management functions of a public company and monetize our antibody humanization patents and royalties assets if market conditions permit. Also, we have relocated our corporate headquarters from Redwood City, California to

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Incline Village, Nevada in order to provide a more favorable cost structure while continuing to meet our ongoing business needs.

### Interest and Other Income and Interest Expense

We expect to continue to recognize interest and other income, which is comprised principally of interest earned on our investment balances. We also expect to continue to recognize interest expense, which represents interest payable on our 2012 Notes and our 2023 Notes.

### Income Tax Expense

Due to our lack of earnings history, prior to the Spin-Off, our gross deferred tax assets had been fully offset by a valuation allowance on our Consolidated Balance Sheet. However, as a result of the Spin-Off, we expect that our history of royalty revenues and the significantly lowered cost structure will provide a basis to reverse the valuation allowance on our deferred tax assets as of December 31, 2008, which amount we expect to be approximately \$33.5 million. As a result, we expect that our effective income tax rate going forward will be approximately 40%.

### Principal Assets and Liabilities

In connection with the sale of our commercial operations and antibody manufacturing plant in the first quarter of 2008 and the Spin-Off in December 2008, we have sold or spun-off all of our intangible assets and we have distributed to Facet the majority of our fixed assets that existed as of December 31, 2007 on our balance sheet.

Going forward, with the exception of cash, investments and deferred tax asset balances, we expect to have minimal other assets on our balance sheet. We expect such other assets to be comprised primarily of prepaid operating expenses and debt issuance costs associated with our 2012 and 2023 Notes as well as fixed assets to support our infrastructure and operations in our new corporate headquarters in Incline Village, Nevada.

After we pay all of the current liabilities, excluding debt and deferred revenue balances, that have been incurred up to the spin-off date, which, as of September 30, 2008, were \$55.5 million, including liabilities that relate to the biotechnology operations, we expect our current liability balances to decrease significantly going forward in light of our downsized operations. We expect to pay such amounts in the first quarter of 2009. The majority of our pre-Spin-Off deferred revenues related to our two former collaboration agreements, which were transferred to Facet and, therefore, our deferred revenue balance going forward will not be significant. In addition, in connection with the Spin-Off, we entered into a Co-Tenancy Agreement and a sublease assignment agreement with Facet pursuant to which we assigned all rights and obligations under the lease liability for our former corporate headquarters in Redwood City, California to Facet, which resulted in the transfer of the related fixed assets and financing liability to Facet. See “- I. Business Overview - Properties.”

## LIQUIDITY AND CAPITAL RESOURCES

After the Spin-Off, we expect that cash from future royalty revenues, net of operating expenses, debt service and income taxes, plus cash on hand, will be sufficient to fund our operations over the next several years. We expect that royalties will represent substantially all of our revenues after the Spin-Off. On a pro forma basis as of September 30, 2008, after giving effect to the Spin-Off and our capitalization of Facet with \$405 million in cash, we had cash and cash equivalents of \$146.1 million. In the first quarter of 2009, we expect to pay an amount equal to all of the current liabilities, excluding debt and deferred revenue balances, that have been incurred up to the Spin-off date, which, as of September 30, 2008, were \$55.5 million, including liabilities that relate to the biotechnology operations. Although our cash on hand has reduced significantly as a result of the Spin-Off, we expect that going forward our operating expenses will also decrease significantly as we will no longer incur research and development expenses related to the biotechnology operations and we will have less than 10 full-time employees to support our business.

In parallel with our Spin-Off preparations, we had been evaluating opportunities to monetize our antibody humanization patents and royalties assets through a potential sale or securitization transaction; however, primarily

due to market conditions, we are not currently pursuing a monetization transaction, but would continue to evaluate whether such a transaction in the future is in the best interest of our stockholders. Any sale of our antibody humanization patents and royalties assets would decrease our revenues, while a securitization transaction would increase our expenses as we would become obligated to make periodic principal and interest payments on any notes issued in connection with such securitization. When market conditions warrant, we intend to explore means to monetize our antibody humanization patents and royalties assets. We also will evaluate distributing our income, net of operating expenses, debt service and income taxes, to our stockholders.

Our principal obligation following the Spin-Off will be our \$500 million aggregate principal amount of convertible notes. Neither series of our outstanding convertible notes is redeemable by us prior to maturity, although the holders of our 2023 Notes have a put right in August 2010, August 2013 and August 2018. Accordingly, we expect that our debt service obligations over the next several years will consist primarily of interest payments. From time to time, we may redeem, repurchase or otherwise acquire all or a portion of our convertible notes in the open market or otherwise, in accordance with the terms of our indentures. We would make such acquisitions only if we deemed it to be in our stockholders' best interest. We may finance such acquisitions with cash on hand and/or with public or private equity or debt financings if we deem such financings are available on favorable terms. To the extent holders of our 2023 Notes require us to repurchase all or a portion of their notes, we believe we will have sufficient funds for such repurchase from our expected operating income together with our cash on hand, although we will evaluate our liquidity situation at such time and determine whether we should also undertake additional financings at such time.

## CRITICAL ACCOUNTING POLICES AND USE OF ESTIMATES

The preparation of our financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in our financial statements and accompanying notes. Actual results could differ materially from those estimates. We have previously disclosed our key critical accounting policies, most recently in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2008. On a forward-looking basis, the following critical accounting policies that require significant estimates and judgments apply to our business:

### Income Taxes

Our income tax provision is based on income before taxes and is computed using the liability method in accordance with SFAS No. 109, “Accounting for Income Taxes.” Deferred tax assets and liabilities are determined based on the difference between the financial statement and tax basis of assets and liabilities using tax rates projected to be in effect for the year in which the differences are expected to reverse. Significant estimates are required in determining our provision for income taxes. Some of these estimates are based on interpretations of existing tax laws or regulations, or the expected results from any future tax examinations. Various internal and external factors may have favorable or unfavorable effects on our future income provision for income taxes. These factors include, but are not limited to, changes in tax laws, regulations and/or rates, the results of any future tax examinations, changing interpretations of existing tax laws or regulations, changes in estimates of prior years' items, past levels of R&D spending, acquisitions, changes in our corporate structure, and changes in overall levels of income before taxes all of which may result in periodic revisions to our provision for income taxes. Uncertain tax positions are accounted for in accordance with Financial Accounting Standards Board (“FASB”) Interpretation No. 48, “Accounting for Uncertainty in Income Taxes.” We accrue tax related interest and penalties related to uncertain tax positions and include these with income tax expense in the Condensed Consolidated Statements of Income.

Due to our lack of earnings history, prior to the Spin-Off, the gross deferred tax assets had been fully offset by a valuation allowance on our Consolidated Balance Sheet. However, as a result of the Spin-Off, we expect that our history of royalty revenues and the significantly lowered cost structure to support our intellectual properties, manage our licensing operations and provide for certain essential reporting and management functions of a public company will provide a basis to reverse the valuation allowance on our deferred tax assets as of December 31, 2008, which amount we expect to be approximately \$33.5 million.

## EXECUTIVE OFFICERS AND DIRECTORS

The following table sets forth information regarding our executive officers and directors as of December 18, 2008:

Name	Age	Position	Board Term Expires In
John P. McLaughlin	57	President and Chief Executive Officer, Director	2009
Christine Larson	55	Vice President and Chief Financial Officer	—
Paul W. Sandman	61	Director	2011
Laurence J. Korn, Ph.D.	59	Director	2010
Joseph Klein III	47	Director	2010

## EXECUTIVE OFFICERS

*John P. McLaughlin.* Mr. McLaughlin joined our Board in November 2008 and became our President and Chief Executive Officer upon the Spin-Off. Mr. McLaughlin served as the chief executive officer and a director of Anesiva, Inc. from 2000 to 2008, and previously as president of Tularik, Inc. from December 1997 to September 1999. From September 1987 to September 1997, he held a number of senior management positions at Genentech Inc., including executive vice president and general counsel. From January 1985 to September 1987, McLaughlin was a partner at a Washington, D.C. law firm specializing in food and drug law. Prior to that, he served as counsel to various subcommittees in the United States House of Representatives. Mr. McLaughlin also co-founded and served as board chairman of Eyetech Pharmaceuticals, Inc. He currently serves as a director of Seattle Genetics, Inc. and co-founded and serves as a director of Peak Surgical, Inc. Mr. McLaughlin received a B.A. in Government from the University of Notre Dame and a J.D. from the Catholic University of America.

*Christine Larson.* Ms. Larson became our Chief Financial Officer upon the Spin-Off. Ms. Larson served as an independent financial consultant from 2005 to 2008 for a wide range of clients, including a public bio-pharmaceutical company, an early stage biometric authentication and credit card payment processing firm, a food manufacturing company, a digital frame distributor and a global Microsoft business solutions firm. From 2003 to 2005, Ms. Larson was Chief Financial Officer for TWL Corporation, an early-stage, acquisitive public company. From 1999 to 2002, Ms. Larson was a management consultant for KPMG Consulting, Inc. From 1985 to 1998, Ms. Larson held a number of senior management positions at Bank of America, NT&SA, including Managing Director, Senior Vice President and Group CEO. She serves as a Board Officer and Vice President of Finance for the California Alumni Association, UC Berkeley. Ms. Larson also serves as an Audit Committee member of the George Mark Children's House. She received a BS in Food and Nutritional Sciences from the University of California, Berkeley and an MBA from California State University, East Bay. Ms. Larson is a Certified Public Accountant in the State of California.

## BOARD OF DIRECTORS

After the Spin-Off, our Board will consist of the four directors named below. We may appoint additional directors as permitted under our by-laws.

*Joseph Klein III.* Mr. Klein joined our Board in July 2007. Mr. Klein currently serves as Managing Director of Gauss Capital Advisors, LLC, a financial consulting and investment advisory firm focused on biopharmaceuticals, which he founded in March 1998. Since September 2003, Mr. Klein has also served as a Venture Partner of Red Abbey Venture Partners, LP, a life sciences private equity fund. From September 2001 to

September 2002, Mr. Klein was a Venture Partner of MPM Capital, a healthcare venture capital firm. Mr. Klein served as Vice President, Strategy, for Medical Manager Corporation, a leading developer of physician office management information systems, from June 1999 until it merged with WebMD Corporation in September 2000. In the 10 years prior to joining Medical Manager Corporation, Mr. Klein was a portfolio manager and securities analyst at T. Rowe Price Associates, Inc. and The Kaufmann Fund, Inc. Mr. Klein serves on the Board of Directors of BioMarin Pharmaceutical Inc., Isis Pharmaceuticals, Inc., OSI Pharmaceuticals, Inc. and Savient Pharmaceuticals, Inc., each of which is a publicly traded company. Mr. Klein also serves on the board of directors of two privately held or non-reporting entities. Mr. Klein received a B.A. in economics from Yale University and an M.B.A. from the Stanford Graduate School of Business.

*Laurence J. Korn, Ph.D.* Dr. Korn, one of our co-founders, was elected as one of our first directors in July 1986. Since 2004, Dr. Korn has served as an independent consultant, and also serves on the Board of Directors of Symphogen A/S, a privately held entity. Dr. Korn served as our Chairperson of the Board between July 1986 and May 2002 and as our Chairman of the Board between May 2002 and June 2004. Dr. Korn also served as our Chief Executive Officer from January 1987 until April 2002. From March 1981 to December 1986, Dr. Korn headed a research laboratory and served on the faculty of the Department of Genetics at the Stanford University School of Medicine. Dr. Korn received his Ph.D. from Stanford University and was a Helen Hay Whitney Postdoctoral Fellow at the Carnegie Institution of Washington and a Staff Scientist at the MRC Laboratory of Molecular Biology in Cambridge, England, before becoming an Assistant Professor at Stanford.

*John P. McLaughlin.* See “-Executive Officers.”

*Paul W. Sandman.* Mr. Sandman joined our Board in November 2008. Mr. Sandman served as Boston Scientific Corporation's General Counsel for 14 years until his retirement in February 2008. Prior to joining Boston Scientific, he served as Senior Vice President, General Counsel and Secretary at Wang Laboratories for nine years. Mr. Sandman received his A.B. from Boston College and his J.D. from Harvard Law School.

## CORPORATE GOVERNANCE MATTERS

Our Board of Directors has established four standing committees, the Audit Committee, Compensation Committee, Nominating and Governance Committee, and a newly created Litigation Committee. Our Board may establish other committees to facilitate the management of our business. Our Board

dissolved its Scientific Review Committee and Equity Grant Committee in connection with the Spin-Off. The primary purpose of our Litigation Committee is to oversee our litigation strategy and consider and manage any material litigation in which we may be involved. Our Board adopted a charter to govern our Litigation Committee which can be obtained on our website at [www.pdl.com](http://www.pdl.com).

Our Board also approved amendments to our Corporate Governance Guidelines, Audit Committee Charter, Compensation Committee Charter, and Nominating and Governance Committee Charter, each effective as of December 18, 2008. A copy of each of our amended Corporate Governance Guidelines, Audit Committee Charter, Compensation Committee Charter, and Nominating and Governance Committee Charter is available on our website at [www.pdl.com](http://www.pdl.com).

## Item 9.01 Financial Statements and Exhibits

### (b) Pro Forma Financial Information

The pro forma financial information specified in Article 11 of Regulation S-X is filed as Exhibit 99.1 hereto.

19

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### (d) Exhibits

Exhibit No.	Exhibit Description
10.1	Separation and Distribution Agreement, dated December 17, 2008, between PDL BioPharma, Inc. and Facet Biotech Corporation
10.2	Transition Services Agreement, dated December 18, 2008, between PDL BioPharma, Inc. and Facet Biotech Corporation
10.3	Tax Sharing and Indemnification Agreement, dated December 18, 2008, between PDL BioPharma, Inc. and Facet Biotech Corporation
99.1	Unaudited pro forma condensed financial statements.

20

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## SIGNATURE

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

Date: December 23, 2008

**PDL BioPharma, Inc.**

By: /s/ John P. McLaughlin  
John P. McLaughlin  
President and Chief Executive Officer

21

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## EXHIBIT INDEX

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22

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## Separation and Distribution Agreement

between

**PDL BioPharma, Inc.,**  
a Delaware corporation

and

**Facet Biotech Corporation,**  
a Delaware corporation

Dated as of December 17, 2008

### Table of Contents

	PAGE
Article I Definitions	1
Article II The Separation	11
2.1 General	11
2.2 Transfer of Facet Assets and Assumption of Facet Liabilities	11
2.3 Governmental Approvals; Consents	12
2.4 Deferred Transfers/Assumptions	12
2.5 Calculation, Adjustment and Payment of Selected Liabilities	13
2.6 Termination of Agreements	14
2.7 Disclaimer of Representations and Warranties	14
Article III The Distribution	15
3.1 The Distribution	15
3.2 Actions in Connection with the Distribution	16
3.3 Conditions to Distribution	17
3.4 Fractional Shares	18
Article IV Insurance	18
4.1 Policies and Rights Included Within the Facet Assets	18
4.2 Post-Effective Time Claims	18
4.3 PDL Policies	19
Article V Releases And Indemnification	19
5.1 Release of Pre-Distribution Claims	19
5.2 Indemnification by Facet	21
5.3 Indemnification by PDL	21
5.4 Reduction for Insurance Proceeds and Other Recoveries	22
5.5 Procedures For Indemnification of Third-Party Claims	22
5.6 Additional Matters	24
5.7 Survival of Indemnities	24
Article VI Certain Covenants And Other Agreements Of The Parties	25
6.1 Restriction on Employee Solicitation and Hiring	25
6.2 Legal Names	25
6.3 Preparation of Opening Facet Balance Sheet	25
6.4 Amendment of Patent Licensing Master Agreements	25
6.5 Payment of Accrued Merit Bonuses	26
Article VII Confidentiality	26
7.1 Confidentiality	26
7.2 Protective Arrangements	27
Article VIII Access To Information And Services	27
8.1 Provision of Books and Records	27
8.2 Access to Information	28
8.3 Production of Witnesses	28
8.4 Privileged Matters	28
Article IX Dispute Resolution	30
9.1 Disputes and Negotiation	30
9.2 Dispute Resolution and Arbitration	30
Article X Further Assurances	31
10.1 Further Assurances	31

Article XI Termination	32
11.1 Termination	32
Article XII Miscellaneous	32

12.1	Governing Law; Jurisdiction	32
12.2	Assignability	32
12.3	Third Party Beneficiaries	33
12.4	Notices	33
12.5	Severability	34
12.6	Expenses	34
12.7	Survival of Covenants	34
12.8	Waivers of Default	34
12.9	Specific Performance	34
12.10	Amendments	34
12.11	Schedules	35
12.12	Construction	35
12.13	Counterparts	35

## Separation and Distribution Agreement

This Separation and Distribution Agreement (this “Agreement”), dated as of December 17, 2008, is entered into by and between PDL BioPharma, Inc., a Delaware corporation (“PDL”), and Facet Biotech Corporation, a Delaware corporation (“Facet”) (each a “Party” and collectively, the “Parties”). Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in Article I.

### Recitals

WHEREAS, the Board of Directors of PDL has determined that it is appropriate, desirable and in the best interests of PDL and its stockholders to separate its two businesses, the PDL Business and the Facet Business, into PDL and Facet respectively, two publicly traded companies, by means of the transfer/assumption of certain assets and liabilities from PDL to Facet, all as more fully described in this Agreement and the Ancillary Agreements (the “Separation”);

WHEREAS, in order to effect the Separation, the Board of Directors of PDL has further determined that it is appropriate, desirable and in the best interests of PDL and its stockholders to distribute to holders of shares of PDL Common Stock, on a pro rata basis, all of the issued and outstanding shares of common stock, par value \$0.01 per share, of Facet, all as more fully described in this Agreement and the Ancillary Agreements (such shares, the “Facet Common Stock”, and such distribution, the “Distribution”); and

WHEREAS, the Parties intend in this Agreement to set forth the principal corporate arrangements between the Parties with respect to the Separation and the Distribution.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions, covenants and provisions of this Agreement, PDL and Facet mutually covenant and agree as follows:

## Article I

### Definitions

1.1 “Action” shall mean any demand, action, cause of action, suit, countersuit, arbitration, inquiry, proceeding or investigation by or before any federal, state, local, foreign or international Governmental entity or any arbitration or mediation tribunal.

1.2 “Affiliate” of a Person shall mean any firm, individual, corporation, business trust, joint venture, association, company, limited liability company, partnership, or other organization or entity, that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control (provided that such common control is not by a natural person) with such specified Person. As used herein, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or other interests, by contract or otherwise; provided that if control is

deemed solely on the basis of ownership of voting securities or other interests, such ownership must be in excess of twenty percent (20%) of the then-outstanding shares of common stock or the combined voting power of such Person. For the sake of clarity, neither Facet nor any of its subsidiaries shall be considered Affiliates of PDL and its subsidiaries under this Agreement and vice versa.

1.3 “Agent” shall have the meaning set forth in Section 3.1(a).

1.4 “Ancillary Agreements” shall mean all of the contracts, obligations, indentures, agreements, leases, purchase orders, commitments, permits, licenses, notes, bonds, mortgages, arrangements or undertakings (whether written or oral and whether express or implied) that are legally binding on either Party or any part of its property under applicable Law entered into in connection with the transactions contemplated hereby, including the documents listed on Attachment 1.4, to be delivered by Facet and PDL in connection with the Separation.

1.5 “Clinical Trial” shall mean a pre-clinical or clinical trial related to the Products.

1.6 “Clinical Trial Materials” shall mean the Products and the placebo for each of these Products for use in Clinical Trials, whether in bulk, formulated or finished form and whether in existence at the Effective Time.

1.7 “Clinical Trial Study Reports” shall mean all reports or summaries of all data, records and documents resulting from the Clinical Trials.

- 1.8 “Combined Books and Records” shall have the meaning set forth in Section 8.1(b).
- 1.9 “Consents” shall mean any and all consents, waivers or approvals from, or notification requirements to, any Third Parties, including those set forth on Attachment 1.9.
- 1.10 “Contract” shall mean any contract, obligation, indenture, agreement, lease, purchase order, commitment, permit, license, note, bond, mortgage, arrangement or undertaking (whether written or oral and whether express or implied) that is legally binding on any Person or any part of its property under applicable Law, but excluding this Agreement and any Ancillary Agreement save as otherwise expressly provided in this Agreement or any Ancillary Agreement.
- 1.11 “Convertible Debt” shall mean the (i) 2.75% Convertible Subordinated Notes due 2023 issued by PDL, and (ii) 2.00% Convertible Senior Notes due February 15, 2012 issued by PDL.
- 1.12 “Distribution” shall have the meaning set forth in the recitals hereto.
- 1.13 “Distribution Date” shall mean the date on which the Distribution to the stockholders of PDL is effective, which is December 18, 2008.

- 1.14 “Effective Time” shall mean 11:59 p.m. Eastern Standard Time on the day immediately preceding the Distribution Date.
- 1.15 “Environmental Laws” shall mean any environmental laws, rules and regulations of any jurisdiction.
- 1.16 “Environmental Liabilities” shall mean any Liabilities relating to Environmental Laws.
- 1.17 “Exchange” shall mean the NASDAQ Global Market.
- 1.18 “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the time that reference is made thereto.
- 1.19 “Excluded Assets” shall mean all assets solely relating to the PDL Business, including the Excluded Intellectual Property and the Queen Royalties, and any and all Contracts of PDL other than the Assumed Contracts and the Leases, and all of PDL’s rights, title and interest in and to any and all other assets that are expressly contemplated to be retained by PDL by this Agreement or any Ancillary Agreement (or the Attachments and Schedules hereto or thereto).
- 1.20 “Excluded Intellectual Property” shall mean (a) the Trademarks listed in Attachment 1.20(a); (b) the patents and patent applications listed in Attachment 1.20(b), and any patents of addition, re-examinations, reissues, extensions, granted supplementary protection certifications, substitutions, confirmations, registrations, revalidations, revisions, additions and the like, of or to said patents and any and all divisionals, continuations and continuations-in-part, and any patents issuing therefrom, as well as any patent applications related thereto (together, the “Queen et al. Patents”); (c) all U.S. and foreign copyrights and copyrightable subject matter solely related to the PDL Business (but excluding the Facet Copyrights), whether registered or unregistered, published or unpublished, statutory or common law, and all Actions against past, present, and future infringement, misappropriation, or other violation of the foregoing; and (d) all other Intellectual Property solely related to the PDL Business.
- 1.21 “Excluded Liabilities” shall mean (a) any and all Liabilities of PDL and its Affiliates, relating solely to the PDL Business or arising out of or relating to the Excluded Assets, (b) any and all Liabilities of PDL and its Affiliates relating to, arising out of or resulting from PDL’s performance or obligations under any Ancillary Agreement or this Agreement and (c) the Convertible Debt.
- 1.22 “Facet Assets” shall mean:
- (a) All categories of assets that are reflected as assets of Facet in the unaudited pro forma condensed combined balance sheet of Facet, dated September 30, 2008, included in the Form 10, with the value of such asset as reflected in the Opening Facet Balance Sheet.

- (b) All of PDL’s rights, title and interest in and to the patents and patent applications listed in Attachment 1.22(b), and any patents of addition, re-examinations, reissues, extensions, granted supplementary protection certifications, substitutions, confirmations, registrations, revalidations, revisions, additions and the like, of or to said patents and any and all divisionals, continuations and continuations-in-part, and any patents issuing therefrom, as well as any patent applications related thereto and all Actions against past, present, and future infringement, misappropriation, or other violation of the foregoing.
- (c) All of PDL’s rights, title and interest in and to the Trademarks listed on Attachment 1.22(c), together with (i) all common law rights to such Trademarks, (ii) the goodwill of the Facet Business symbolized by such Trademarks, (iii) all Actions for, or arising from any infringement, dilution, unfair competition, or other violation, including past infringement, dilution, unfair competition, or other violation, of such Trademarks, and (iii) all rights corresponding thereto throughout the world.
- (d) All of PDL’s rights, title and interest in and to the domain names listed in Attachment 1.22(d) and all Actions against past, present, and future infringement, misappropriation, or other violation of the foregoing.
- (e) All U.S. and foreign copyrights and copyrightable subject matter related to the Facet Business, whether registered or unregistered, published or unpublished, statutory or common law, including all related registrations, applications and common law rights, in any labels, product marketing materials or other copyrighted works related to the Facet Business and all Actions against past, present, and future infringement, misappropriation, or other violation of the foregoing (“Facet Copyrights”).



(f) All of PDL's rights, title and interest in and to all Intellectual Property, including trade secrets, not hereto forth described in the definition of Facet Assets that are reasonably likely to be used in the Facet Business, but excluding the Excluded Intellectual Property.

(g) With respect to the Products, all (i) regulatory filings and approvals, registrations and governmental authorizations, (ii) each NDA, (iii) each IND or equivalent, (iv) all compliance notices, licenses and permits, (v) all applications to the FDA or the comparable foreign law or bodies in effect or pending at the Effective Time, and (vi) all materials and Information relating to the FDA and other Governmental Approvals for the Facet Business, all as set forth on Attachment 1.22(g), and all information contained therein (collectively, the "Registrations").

(h) All Facet Books and Records. "Facet Books and Records" shall mean books and records which relate to Facet, the Facet Assets, the Facet Liabilities or the conduct of the Facet Business.

(i) All pre-clinical and clinical data related to the Facet Business and which is contained in PDL's databases or otherwise in PDL's possession or control.

4

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(j) All fixed assets of PDL as of the Effective Time except for the PDL Fixed Assets.

(k) All rights and benefits of PDL in existence as of the Effective Time or arising after the Effective Time under the Contracts listed in Attachment 1.22(k) (the "Assumed Contracts"), including any rights to Intellectual Property or Facet Copyrights contained therein. The Assumed Contracts shall be deemed to include all purchase, work and change orders related thereto.

(l) All of PDL's rights, title and interest in and to the Clinical Trial Materials.

(m) All of PDL's rights, title and interest in and to the Clinical Trial Study Reports.

(n) Cash and cash equivalents in the amount of Four Hundred Five Million U.S. Dollars (\$405,000,000) in the aggregate plus the amount of the Post-Closing Cash, as determined in accordance with Section 2.5.

(o) All of PDL's rights under the Leases, including the right to possess, use and occupy the Premises and the Subleased Premises (as defined in the Leases), and all of PDL's rights, title and interest in and to the Lessee Improvements and the Sublessee Improvements (as those terms are defined in the Leases) constructed at 1400 and 1500 Seaport Boulevard.

(p) Any and all interest in the Facet Subsidiaries, including Thirty Seven Thousand (37,000) shares in PDL BioPharma France S.A.S. (One Euro per share), One Thousand (1000) shares in Fremont Management, Inc. (par value \$.01 per share) and all of the membership interests in Fremont Holdings, LLC.

(q) Any and all interest in Ophthotech Corporation, including 1,835,000 shares of Series A-1 Preferred Stock (\$0.001 par value per share).

(r) Facet Policies.

(s) All of PDL's rights, title and interest in and to any and all other assets that are expressly contemplated by this Agreement or any Ancillary Agreement (or the Attachments and Schedules hereto or thereto) to be transferred to Facet.

For the avoidance of doubt and notwithstanding anything to the contrary herein, Facet Assets shall not include (i) any cash or cash equivalents other than as described in clause (n) above, (ii) any net operating losses, net operating loss carry-forwards or other Tax attributes of PDL, whether or not relating to Facet or the Facet Business, or (ii) the Excluded Assets.

1.23 "Facet Business" shall mean the business of PDL related to the research, development, commercialization and optimization of human therapeutics and technologies related thereto, including the Products, as conducted or proposed to be conducted by PDL prior to or as of the Effective Time.

1.24 "Facet Employees" shall mean all employees listed on Attachment 1.24.

5

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1.25 "Facet Liabilities" shall mean:

(a) All categories of Liabilities that are reflected as liabilities of Facet in the unaudited pro forma condensed combined balance sheet of Facet, dated September 30, 2008, included in the Form 10 with the value of such liabilities as reflected in the Opening Facet Balance Sheet.

(b) All Liabilities under the Assumed Contracts.

(c) All Liabilities under the Leases.

(d) All Liabilities under the Registrations arising after the Effective Time.

(e) All other Liabilities (other than Excluded Liabilities) arising out of the conduct of PDL's business prior to the Effective Time, other than liabilities solely related to the PDL Business, including Liabilities arising out of the conduct of the Facet Business or arising out of or related to the Facet Assets.

- (f) Any and all Environmental Liabilities.
- (g) Any and all Liabilities expressly set forth on Attachment 1.25(g).
- (h) The Selected Liabilities, as described in Section 2.5.
- (i) Any and all other Liabilities of Facet relating to, arising out of or resulting from Facet's performance or obligations under any Ancillary Agreement or this Agreement.
- (j) any and all other Liabilities that are expressly contemplated by this Agreement or any Ancillary Agreement (or the Attachments and Schedules hereto or thereto) to be transferred to and assumed by Facet.

For the avoidance of doubt, Facet Liabilities shall not include the Excluded Liabilities.

1.26 "Facet Policies" shall mean all Policies, current or past, which are owned or maintained by or on behalf of PDL or its Subsidiaries, which relate solely to the Facet Business and are assignable to Facet, as listed on Attachment 1.26.

1.27 "Facet Subsidiaries" shall mean PDL BioPharma France S.A.S., Fremont Management, Inc. and Fremont Holdings, LLC.

1.28 "Form 10" shall mean the registration statement on Form 10 filed by Facet with the SEC relating to the Facet Common Stock, as amended from time to time.

1.29 "Former Facet Employee" shall mean, as of the Effective Time, any individual who, before the Effective Time, terminated employment with PDL or its predecessors and whose principal services to PDL were related to the Facet Business.

6

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1.30 "Former PDL Employee" shall mean, as of the Effective Time, any individual who, before the Effective Time, terminated employment with PDL or its predecessors and is not listed on Attachment 1.24 to this Agreement, other than any Former Facet Employee.

1.31 "Governmental Approvals" shall mean any notices, reports or other filings to be made, or any consents, registrations, approvals, permits or authorizations to be obtained from, any Governmental Entity.

1.32 "Governmental Entity" shall mean any federal, state, local, foreign or international court, government department, commission, board, bureau, agency, official or other regulatory, administrative or governmental entity.

1.33 "IND" shall mean an investigational new drug application, including any amendments and supplements thereto, and all reports, correspondence and other submissions related thereto.

1.34 "Indemnifying Party" shall have the meaning set forth in Section 5.4(a).

1.35 "Indemnitee" shall have the meaning set forth in Section 5.4(a).

1.36 "Indemnity Payment" shall have the meaning set forth in Section 5.4(a).

1.37 "Information" shall mean information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product), communications and materials otherwise related to or made or prepared in connection with or in preparation for any legal proceeding, and other technical, financial, employee or business information or data.

1.38 "Insurance Proceeds" shall mean those monies (a) received by an insured from an unaffiliated Third Party insurer under any PDL Pre-Distribution Policy, or (b) paid by such Third Party insurer on behalf of an insured under any PDL Pre-Distribution Policy, in either case net of any applicable premium adjustment, retrospectively-rated premium, deductible, retention, or cost of reserve paid or held by or for the benefit of such insured.

1.39 "Intellectual Property" shall mean all intellectual property and industrial property rights of any kind or nature, including all United States and foreign (a) patents, patent applications, patent disclosures, and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions and extensions thereof, (b) Trademarks and all goodwill associated therewith, (c) rights of publicity, (d) moral rights and rights of attribution and integrity, (g) rights in Software, (h) trade secrets and

7

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all other confidential and proprietary information, know-how, inventions, improvements, processes, formulae, models and methodologies, (i) rights to domain names, (j) rights to personal information, (k) telephone numbers and internet protocol addresses, (l) applications and registrations for the foregoing, and (m) Actions against past, present, and future infringement, misappropriation, or other violation of the foregoing.

1.40 "Law" shall mean any United States or non-United States federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

1.41 "Leases" shall mean (a) that certain Sublease, effective July 6, 2006, between Openwave Systems Inc. and PDL, (b) that certain Triple Net Lease, effective July 6, 2006, between Pacific Shores Investors, LLC and PDL (regarding 1400 Seaport Boulevard) and (c) that certain Triple Net Lease,

effective July 6, 2006, between the Pacific Shores Investors, LLC and PDL (regarding 1500 Seaport Boulevard).

1.42 “Liabilities” shall mean any and all debts, liabilities, and obligations, whether accrued or fixed, known or unknown, absolute or contingent, matured or unmatured, reserved or unreserved, or determined or determinable of any kind or nature whatsoever, including those arising under any Law or Action, whether asserted or unasserted, or order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental entity, and those arising under any Contract or any fines, damages or equitable relief which may be imposed in connection with any of the foregoing and including all costs and expenses related thereto.

1.43 “NDA” shall mean a new drug application, including any amendments or supplements thereto, and all reports, correspondence and other submissions related thereto.

1.44 “Opening Facet Balance Sheet” shall mean the combined balance sheet of Facet, dated as of the Distribution Date, prepared on the same basis as the unaudited pro forma condensed combined balance sheet, dated September 30, 2008, included in the Form 10.

1.45 “Party” shall have the meaning set forth in the preamble hereof.

1.46 “PDL Business” shall mean the antibody humanization patent royalty business of PDL, other than the Facet Business, as conducted or proposed to be conducted by PDL prior to or as of the Effective Time. For the avoidance of doubt, the PDL Business includes the operation of the antibody humanization royalty assets business, including the Queen Royalties, Queen et al. Patents, and other assets, Contracts and Liabilities related thereto.

1.47 “PDL Common Stock” shall mean the Common Stock, \$0.01 par value per share, of PDL.

1.48 “PDL Consolidated Balance Sheet” shall have the meaning set forth in Section 2.5(a).

8

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1.49 “PDL Employee” shall mean an active employee or an employee on vacation or on approved leave of absence (including maternity, paternity, family, sick leave, salary continuation, qualified military service under the Uniformed Services Employment and Reemployment Rights Act of 1994, and leave under the Family Medical Leave Act and other approved leaves) who, on the Distribution Date, is employed or will be employed by PDL.

1.50 “PDL Fixed Assets” shall mean the fixed assets listed on Attachment 1.50 and such other fixed assets of Facet with an aggregate value of no more than \$100,000 that the parties may determine within four (4) months after the Effective Time are reasonably required by PDL for the PDL Business.

1.51 “PDL General Liability Policies” shall mean all PDL Pre-Distribution Policies that respond to claims on an occurrence basis.

1.52 “PDL Policies” shall mean all PDL Pre-Distribution Policies that respond to claims on a claims-made basis.

1.53 “PDL Pre-Distribution Policies” shall mean all Policies, other than the Facet Policies and including the PDL General Liability Policies and the PDL Policies, entered prior to or as of the Effective Time, which are between or among PDL and one or more Third Parties, that benefit either or both the PDL Business and the Facet Business.

1.54 “Person” shall mean any natural person, firm, individual, corporation, business trust, joint venture, association, company, limited liability company, partnership, or other organization or entity, whether incorporated or unincorporated, or any governmental entity.

1.55 “Policies” shall mean insurance policies and insurance Contracts of any kind (other than life and benefits policies or Contracts), including primary, excess and umbrella policies, comprehensive general liability policies, director and officer liability, fiduciary liability, automobile, aircraft, property and casualty, business interruption, workers’ compensation and employee dishonesty insurance policies, bonds and self-insurance and captive insurance company arrangements, together with the rights, benefits and privileges thereunder.

1.56 “Post-Closing Cash” shall have the meaning set forth in Section 2.5(d).

1.57 “Products” shall mean, individually and collectively, the human therapeutics (a) under development, regardless of the state of development, by PDL, including daclizumab, elotuzumab (HuLuc63), PDL192, volociximab (M200), visilizumab (Nuvion), fontilizumab (HuZAF), PDL41 and PDL252 and (b) outlicensed by PDL to a Third Party, including Liv-1, PR-1, IL-12 (fully human) and HuM195.

1.58 “Queen Royalties” shall mean any and all receivables or cash received pursuant to Contracts, other than any Assumed Contract, pursuant to which PDL licensed to a Third Party rights to practice the Queen et al. Patents. For the sake of clarity, the Parties agree that: (i) certain of the Assumed Contracts that involve collaborative

9

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development of Products provide for a license to Third Parties of rights to practice the Queen et al. Patents; (ii) no receivable or cash received under any such Assumed Contract shall be deemed a Queen Royalty and (iii) to the extent that a license to the Queen et al. Patents may be necessary for such development, Facet and PDL have entered or shall enter into separate agreements covering any royalty payments.

1.59 “Record Date” shall mean the close of business on the date to be determined by the PDL Board of Directors as the record date for the Distribution.

1.60 “SEC” shall mean the United States Securities and Exchange Commission or any successor agency thereto.

1.61 “Security Interest” shall mean any mortgage, security interest, pledge, lien, charge, claim, option, right to acquire, voting or other restriction, right-of-way, covenant, condition, easement, encroachment, restriction on transfer, or other encumbrance of any nature whatsoever, excluding

restrictions on transfer under security Laws.

1.62 “Selected Liabilities” shall have the meaning set forth in Section 2.5(b).

1.63 “Selected Liabilities Statement” shall have the meaning set forth in Section 2.5(d).

1.64 “Separation” shall have the meaning set forth in the recitals hereto.

1.65 “Software” shall mean all computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, and technology supporting the foregoing, and all documentation, including flowcharts and other logic and design diagrams, technical, functional and other specifications, and user manuals and training materials related to any of the foregoing.

1.66 “Subsidiary” of a Person shall mean any firm, individual, corporation, business trust, joint venture, association, company, limited liability company, partnership, or other organization or entity, whether incorporated or unincorporated of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization, that is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries; provided, however, that no Person that is not directly or indirectly wholly owned by any other Person shall be a Subsidiary of such other Person unless such other Person controls, or has the right, power or ability to control, that Person. For the sake of clarity, Facet shall not be considered a Subsidiary of PDL under this Agreement.

1.67 “Third Party” shall mean any Person other than PDL, any PDL Affiliate, Facet and any Facet Affiliate.

1.68 “Third-Party Claim” shall have the meaning set forth in Section 5.5(a).

10

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1.69 “Trademarks” shall mean all trademarks, service marks, trade names, names, slogans, taglines, logos, design marks, trade dress, product designs, and product packaging, including all applications for and registrations of the foregoing, and including those at common law.

1.70 “Transfer” shall have the meaning set forth in Section 2.2(a).

## Article II

### The Separation

2.1 General. Subject to the terms and conditions of this Agreement, the Parties shall use, and shall cause any respective Subsidiaries to use, their respective reasonable best efforts to consummate the transactions contemplated hereby.

2.2 Transfer of Facet Assets and Assumption of Facet Liabilities. Subject to Sections 2.3, 2.4 and 2.5:

(a) At the Effective Time, PDL shall, and hereby does, transfer, contribute, assign, and convey, or cause to be transferred, contributed, assigned, and conveyed, to Facet all of PDL’s right, title and interest in and to the Facet Assets (the “Transfer”).

(b) At the Effective Time, Facet shall, and hereby does, accept the Transfer from PDL.

(c) On or before the Distribution Date, PDL shall transfer the Facet Employees to Facet.

(d) Except as otherwise specifically set forth in this Agreement or any Ancillary Agreement, at the Effective Time Facet shall, and hereby does, accept, assume or, as applicable, retain all the Facet Liabilities and shall after the Effective Time perform, discharge and fulfill, in accordance with their respective terms, all the Facet Liabilities, in each case, unless specified otherwise in the definition of Facet Liabilities, regardless of (i) when or where such Liabilities arose or arise, (ii) where or against whom such Liabilities are asserted or determined, (iii) which entity is named in any action associated with any Liability, and (iv) whether the facts on which they are based occurred prior to, on or after the Effective Time (the “Assumption”). Notwithstanding the foregoing, Facet shall not assume any Liability attributable to the failure of PDL or its officers, directors, employees, agents or Affiliates to materially perform PDL’s obligations to Facet pursuant to this Agreement or the Ancillary Agreements.

(e) If at any time, after the Effective Time, the Parties agree that PDL or its Subsidiaries possess any assets or liabilities related to the Facet Business, PDL shall as promptly as practicable transfer or cause to be transferred, at Facet’s expense, and Facet shall accept such transfer and/or assume, for no additional consideration, such Facet Asset and/or Liability, including any and all economic benefits generated from such Facet Asset and/or Liabilities after the Effective Time, to Facet. Each such

11

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transferred asset or liability shall be deemed a Facet Asset or a Facet Liability, respectively, and shall be subject to the terms and conditions of this Agreement applicable thereto.

(f) If at any time, after the Effective Time, the Parties agree that Facet or its Subsidiaries possess any assets or liabilities solely related to the PDL Business, Facet shall as promptly as practicable transfer or cause to be transferred, at PDL’s expense, and PDL shall accept such transfer and/or assume, for no consideration, such PDL Asset and/or Liability, including any and all economic benefits generated from such PDL Asset and/or Liabilities after the Effective Time, to PDL. Each such transferred asset or liability shall be deemed a PDL Asset or a PDL Liability, respectively, and shall be subject to the terms and conditions of this Agreement applicable thereto.

(g) In furtherance of the Transfer and the assumption of the Facet Liabilities by Facet as set forth above, and simultaneously with the execution and delivery of this Agreement (i) PDL shall execute and deliver such bills of sale, stock powers, certificates of title, assignments of contracts and other instruments of transfer, conveyance and assignment as and to the extent necessary to evidence the Transfer, and (ii) Facet shall execute and deliver to PDL such bills of sale, stock powers, certificates of title, assumptions of contracts, indemnity agreements and other instruments of assumption as and to the extent necessary to evidence the valid and effective Assumption.

### 2.3 Governmental Approvals; Consents.

(a) To the extent that the Transfer or the Assumption requires any Governmental Approvals, the Parties shall use reasonable best efforts to obtain any such Governmental Approvals. If and to the extent that the Transfer or the Assumption would be a violation of applicable laws or require any Governmental Approval in connection with the Separation or the Distribution, then, unless PDL shall otherwise determine, the Transfer to or Assumption by Facet of such Facet Assets or Facet Liabilities, as the case may be, shall be automatically deemed deferred and any such purported Transfer or the Assumption shall be null and void until such time as all legal impediments are removed and/or each of such Governmental Approval has been obtained.

(b) The Parties shall use reasonable best efforts to obtain any Consents required in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, no Party shall be obligated to pay any consideration therefor to any Third Party from whom any such Consent, substitution or amendment is requested (unless such Party is fully reimbursed by the requesting Party).

### 2.4 Deferred Transfers/Assumptions.

(a) If the Transfer of any Facet Asset or Assumption intended to be Transferred and assumed hereunder is not consummated prior to or at the Effective Time, whether as a result of the provisions of Section 2.3 or for any other reason, then PDL shall thereafter hold such Facet Asset for the use and benefit of Facet if permitted by Law.

12

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(b) If and when the Consents and/or Governmental Approvals, or any other impediments to Transfer or Assumption, the absence of which caused the deferral of Transfer of any Facet Asset or Assumption pursuant to Section 2.3 or otherwise, are obtained or removed (as appropriate), the Transfer of the applicable Facet Asset or Assumption shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement.

(c) With respect to any Facet Asset retained by PDL due to the deferral of the Transfer of such Facet Asset, PDL shall take such actions with respect to such Facet Asset as may be reasonably requested by Facet.

(d) If the Parties are unable to obtain, or to cause to be obtained, any such required Governmental Approvals, Consents, release, substitution or amendment pursuant to Section 2.3 or otherwise, PDL shall (i) continue to be bound by such Contract, license or other obligation, which shall not constitute a Liability of PDL (unless not permitted by Law or the terms thereof), (ii) as agent or subcontractor for Facet, pay, perform and discharge fully all the obligations or other Facet Liabilities thereunder after the Effective Time, and (iii) deliver to Facet any payments, benefits or other consideration received by PDL under such Contract, license or other obligation; provided, however, that PDL shall not be obligated to extend, renew or otherwise cause such Contract, license or other obligation to remain in effect beyond the term in effect as of the Effective Time. Facet shall have the right to direct PDL to exercise PDL's rights under such Contract, license or other obligation for the benefit of Facet. Facet shall fully indemnify PDL and its Affiliates, officers, directors, employees, agents and hold each of them harmless against any and all obligations or Facet Liabilities arising in connection therewith and also for any actions requested by Facet pursuant to Section 2.4(c), provided, however, that Facet shall have no obligation to indemnify PDL with respect to any matter to the extent that PDL has engaged in any violation of Law or fraud in connection therewith. PDL shall, without further consideration, promptly pay and remit, or cause to be promptly paid or remitted, to Facet, all money, rights and other consideration received by it or any of its Subsidiaries in respect of such performance on behalf of Facet (unless any such consideration is an Excluded Asset of PDL pursuant to this Agreement). If and when any such Governmental Approval, Consent, release, substitution or amendment shall be obtained or such agreement, lease, license or other rights or obligations shall otherwise become assignable or capable of novation, PDL shall promptly assign, or cause to be assigned, all rights, obligations and other Facet Liabilities thereunder of PDL's to Facet without payment of any further consideration and Facet, without the payment of any further consideration, shall assume such rights and obligations and other Facet Liabilities.

### 2.5 Calculation, Adjustment and Payment of Selected Liabilities.

(a) "PDL Consolidated Balance Sheet" shall mean the unaudited consolidated balance sheet of PDL, dated as of the day immediately preceding the Distribution Date, prepared on a basis consistent with the basis on which the unaudited consolidated balance sheet included in PDL's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2008 and filed with the Securities and Exchange Commission on November 12, 2008 was prepared. As soon as reasonably practicable after the Effective Time, the Parties shall coordinate in the preparation of the PDL Consolidated Balance Sheet.

13

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(b) "Selected Liabilities" shall mean certain current liabilities that are both recorded on the PDL Consolidated Balance Sheet in accordance with U.S. generally accepted accounting principals ("GAAP") and unpaid as of the Effective Time, in the following categories: accrued vacation, accrued preclinical and clinical trial expenses, personnel-related restructuring accruals and accrued post-employment benefits. For clarity, the Selected Liabilities shall be recorded on the Opening Facet Balance Sheet.

(c) Payment of Current Liabilities. PDL shall under the terms of each respective Contract remit payment to vendors for all current liabilities that are both recorded on the PDL Consolidated Balance Sheet in accordance with GAAP and unpaid as of the Effective Time, with the exception of (i) the Selected Liabilities and (ii) any deferred revenue and debt accounts that are recorded on the Opening Facet Balance Sheet. Facet shall remit payment for the Selected Liabilities to the payees identified by PDL under the terms of each respective Contract.

(d) Initial Selected Liabilities Statement and Post-Closing Cash. Facet shall provide PDL in writing with its estimate for the amount of the Selected Liabilities within fifteen (15) business days after the Effective Time (the "Selected Liabilities Statement"). PDL shall have ten (10) business

days following the receipt of the Selected Liabilities Statement to review and analyze Facet's calculation of the amount set forth in the Selected Liabilities Statement (the "Post-Closing Cash") and PDL shall then pay to Facet any undisputed part of the Post-Closing Cash. If PDL does not agree with Facet's calculation of the Post-Closing Cash, the parties shall work in good faith to resolve the disagreement. After resolution of such disagreement, any payments owing either to Facet as a result of such adjustment shall be made within five (5) business days after the agreement of the parties.

2.6 Termination of Agreements. Except with respect to this Agreement and the Ancillary Agreements (and agreements expressly contemplated herein or therein to survive by their terms), the Parties hereby terminate any and all written or oral agreements, arrangements, commitments or understandings, between or among them, effective as of the Effective Time; and each Party shall, at the reasonable request of the other Party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

2.7 Disclaimer of Representations and Warranties. THE PARTIES UNDERSTAND AND AGREE THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT, NO PARTY TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT HEREBY OR THEREBY, IS REPRESENTING OR WARRANTING IN ANY WAY AS TO THE FACET ASSETS, FACET BUSINESS OR FACET LIABILITIES CONTRIBUTED, TRANSFERRED, DISTRIBUTED OR ASSUMED AS CONTEMPLATED HEREBY OR THEREBY, AS TO ANY CONSENTS OR GOVERNMENTAL APPROVALS REQUIRED IN CONNECTION HERewith OR THEREWITH, AS TO THE VALUE OR FREEDOM FROM ANY SECURITY INTERESTS OF, OR ANY OTHER MATTER CONCERNING, ANY FACET ASSETS, FACET BUSINESS OR FACET

LIABILITIES OR AS TO THE ABSENCE OF ANY DEFENSES OR RIGHT OF SETOFF OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY CLAIM, INCLUDING ANY ACCOUNTS RECEIVABLE, OF ANY PARTY, OR AS TO THE LEGAL SUFFICIENCY OF ANY CONTRIBUTION, DISTRIBUTION, ASSIGNMENT, DOCUMENT, CERTIFICATE OR INSTRUMENT DELIVERED HEREUNDER TO CONVEY TITLE TO ANY FACET ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING HEREOF OR THEREOF. EXCEPT AS MAY EXPRESSLY BE SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT, ALL SUCH FACET ASSETS ARE BEING TRANSFERRED ON AN "AS IS," "WHERE IS" BASIS AND SO LONG AS THE TRANSFEROR IS IN COMPLIANCE WITH THE TERMS OF THIS AGREEMENT RELATING TO THE TRANSFER, THE TRANSFEREE SHALL BEAR THE ECONOMIC AND LEGAL RISKS THAT (I) ANY CONVEYANCE SHALL PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD AND MARKETABLE TITLE, FREE AND CLEAR OF ANY SECURITY INTEREST, AND (II) ANY NECESSARY CONSENTS OR GOVERNMENTAL APPROVALS ARE NOT OBTAINED OR THAT THE REQUIREMENTS OF LAWS, CONTRACTS, OR JUDGMENTS ARE NOT COMPLIED WITH.

### **Article III**

#### **The Distribution**

##### **3.1 The Distribution.**

(a) Subject to Section 3.3, on or prior to the Distribution Date, for the benefit of and distribution to the holders of PDL Common Stock on the Record Date, PDL will deliver stock certificates, endorsed by PDL in blank, to the distribution agent, BNY Mellon Shareowner Services (the "Agent"), representing all of the outstanding and issued shares of Facet Common Stock then owned by PDL. PDL shall instruct the Agent to electronically distribute on the Distribution Date the appropriate number of such shares of Facet Common Stock to each such holder or designated transferee or transferees of such holder.

(b) Subject to Section 3.4, each holder of PDL Common Stock on the Record Date (or such holder's designated transferee or transferees) will be entitled to receive in the Distribution one (1) share of Facet Common Stock for every five (5) shares of PDL Common Stock. No investment decision or action by any such stockholder shall be necessary for such stockholder (or such stockholder's designated transferee or transferees) to receive the applicable number of shares of Facet Common Stock.

(c) Facet and PDL, as the case may be, will provide to the Agent any and all information required in order to complete the Distribution.

##### **3.2 Actions in Connection with the Distribution.**

(a) Facet shall prepare and, in accordance with applicable Law, file with the SEC and cause to become effective the Form 10, including amendments, supplements, exhibits and any such other documentation which is necessary or desirable to effectuate the Separation and the Distribution, and PDL and Facet shall each use reasonable best efforts to obtain all necessary approvals from the SEC with respect thereto as soon as practicable.

(b) In connection with the Distribution, PDL and Facet shall prepare and mail to the holders of PDL Common Stock such information concerning Facet, the Facet Business, the Facet Assets, the Facet Liabilities, operations and management, the Distribution, the Separation and such other matters as PDL shall reasonably determine and as may be required by Law.

(c) Facet shall also prepare, file with the SEC and cause to become effective any registration statements or amendments thereto required to effect the establishment of, or amendments to, any employee benefit and other plans necessary or appropriate in connection with the transactions contemplated by this Agreement, or any of the Ancillary Agreements.

(d) PDL and Facet shall take all such action as may be necessary or appropriate under the securities or blue sky laws of the states or other political subdivisions of the United States or of other foreign jurisdictions in connection with the Distribution.

(e) PDL and Facet shall take all reasonable steps necessary and appropriate to cause the conditions set forth in Section 3.3 to be satisfied and to effect the Distribution on the Distribution Date.

(f) Facet shall prepare and file, and shall use reasonable best efforts to have approved and made effective, an application for the original listing on the Exchange of the Facet Common Stock to be distributed in the Distribution, subject to official notice of distribution.

(g) PDL shall give the Exchange not less than ten (10) days' advance notice of the Record Date in compliance with Rule 10b-17 under the Exchange Act.

(h) PDL and Facet shall take all actions necessary to cause, immediately prior to the Distribution, the number of shares of Facet Common Stock issued and outstanding to be increased to equal the number of shares of Facet Common Stock to be distributed to holders of PDL Common Stock in accordance with this Agreement.

(i) PDL and Facet shall cooperate to change the name, effective on or prior to the Distribution Date, of any entity that is part of (i) Facet and any of its Affiliates so that the words "PDL," or derivations thereof are not included in any such name, and (ii) PDL and its Affiliates so that the word "Facet" or derivations thereof are not included in any such name. Notwithstanding the foregoing, Facet may continue to operate PDL BioPharma France S.A.S. under that name during the period in which Facet

winds down the activities of PDL BioPharma France S.A.S., such period not to exceed twelve (12) months after the Effective Time.

3.3 Conditions to Distribution. Subject to Section 3.2, the following are conditions to the consummation of Distribution. The conditions are for the sole benefit of PDL and shall not give rise to or create any duty on the part of PDL or the Board of Directors of PDL to waive or not waive any such condition:

(a) The Form 10 shall have been declared effective by the SEC, with no stop order in effect with respect thereto;

(b) All permits, registrations and consents required under the securities or blue sky laws of the states or other political subdivisions of the United States or of other foreign jurisdictions in connection with the Separation and the Distribution shall have been obtained and be in full force and effect;

(c) All material Government Approvals and other consents necessary to consummate the Separation and the Distribution shall have been obtained and be in full force and effect;

(d) No order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Separation and the Distribution shall be in effect and no other event outside the control of PDL shall have occurred or failed to occur that prevents the consummation of the Distribution;

(e) The Board of Directors of PDL shall have authorized and approved the Distribution and not withdrawn such authorization and approval;

(f) The Board of Directors of PDL shall have approved the basis of the determination of the Selected Liabilities and categories of assets and liabilities included in both the Opening Facet Balance Sheet and the PDL Consolidated Balance Sheet.

(g) The Facet Common Stock to be delivered in the Distribution shall have been approved for listing on the Exchange;

(h) PDL shall have completed the Transfer of Facet Assets and transfer of Facet Employees to Facet, and the Assumption of all the Facet Liabilities by Facet shall be completed;

(i) All Ancillary Agreements shall have been entered into by the Parties and all other Parties thereto, as applicable, and shall remain in full force and effect; and

(j) No other events or developments shall have occurred that, in the sole discretion of the Board of Directors of PDL, would result in the Distribution having a material adverse effect on PDL or on the stockholders of PDL or not being in the best interest of PDL and its stockholders.

3.4 Fractional Shares. The Agent and PDL shall, as soon as practicable after the Distribution Date (a) determine the number of whole shares and fractional shares of Facet Common Stock allocable to each holder of record or beneficial owner of PDL Common Stock as of close of business on the Record Date, (b) aggregate all such fractional shares into whole shares and sell the whole shares obtained thereby in open market transactions at then-prevailing trading prices on behalf of holders who would otherwise be entitled to fractional share interests, and (c) distribute to each such holder, or for the benefit of each such beneficial owner, such holder's or owner's ratable share of the net proceeds of such sale, based upon the average gross selling price per share of Facet Common Stock after making appropriate deductions for any amount required to be withheld for United States federal income tax purposes. The Agent, in its sole discretion, will determine the timing and method of selling such fractional shares, the selling price of such fractional shares and the broker-dealer to which such fractional shares will be sold, provided that the designated broker-dealer is not an Affiliate of PDL or Facet. Neither PDL nor Facet will pay any interest on the proceeds from the sale of fractional shares.

## Article IV

### Insurance

4.1 Policies and Rights Included Within the Facet Assets. Without limiting the generality of the definition of the Facet Assets, the Facet Assets shall include (a) the Facet Policies and (b) any and all rights of an insured Party or its Affiliates under each of the PDL Pre-Distribution Policies, to the extent allowable under such Policies, including rights of indemnity and the right to be defended by or at the expense of the insurer, with respect to all injuries, losses, Liabilities, damages and expenses incurred or claimed to have been incurred prior to the Effective Time by any Party or any of its Affiliates in connection with the Facet Business (provided PDL shall have equal rights with respect to indemnity and the right to be defended to the extent practical and appropriate) and which injuries, losses, liabilities, damages and expenses may arise out of insured or insurable occurrences or events under one or more of the PDL Pre-Distribution Policies; provided, however, that nothing in this Section 4.1 shall be deemed to constitute (or to reflect) the assignment of the PDL Pre-Distribution Policies, or any of them, to Facet.

4.2 Post-Effective Time Claims.

(a) If, subsequent to the Effective Time, any Person shall assert a claim against Facet or its Affiliates with respect to any injury, loss, Liability, damage or expense incurred or claimed to have been incurred prior to the Effective Time, including claims related to the Facet Business, or in connection with the Distribution, and such injury, loss, Liability, damage or expense may have or has arisen out of insured or insurable occurrences, claims or events under one or more of the PDL Pre-Distribution Policies, PDL shall at the time such claim is asserted (except to the extent inconsistent with Section 4.1 and to the extent allowable under the PDL Pre-Distribution Policies) be deemed to assign, without need of further documentation, to Facet or its Affiliates, any and all rights of an insured party under the applicable PDL Pre-Distribution Policy with respect to such asserted claim, including rights of indemnity and the right to be defended

18

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by or at the expense of the insurer; provided, however, that nothing in this Section 4.2 shall be deemed to constitute (or to reflect) the assignment of the PDL Pre-Distribution Policies, or any of them, to Facet.

(b) In the event that any PDL Pre-Distribution Policy does not allow such assignment of a claim to Facet or its Affiliates, at Facet's sole option, cost and expense, claims for coverage of insured Facet Liabilities shall be tendered by PDL as necessary to invoke the benefit of the PDL Pre-Distribution Policies. If such insurers do not promptly acknowledge insurance coverage in connection with such insured Facet Liabilities, then, with respect to such insured Facet Liabilities, Facet, on an as-incurred basis (i) shall advance all amounts expended by PDL, incurred at the request of Facet, for or with respect to such insured Facet Liabilities, including all costs and expenses in connection with the defense and settlement and in satisfaction of any judgment incurred, and amounts sufficient to cover any Liabilities required to be paid by PDL or its Subsidiaries, and (ii) shall pay all costs incurred in connection with pursuing and recovering Insurance Proceeds with respect to the insured Facet Liabilities, but only to the extent so requested by Facet, which shall be entitled to direct such recovery efforts. Any payments made to PDL or its Subsidiaries by Facet or the Facet Subsidiaries on account of such insured Facet Liabilities shall be deemed to be advances pursuant to this Section 4.2. Facet and the Facet Subsidiaries shall have the right to recover any advances made pursuant to Section 4.3 from PDL and its Subsidiaries, and PDL and its Subsidiaries shall have the obligation promptly to reimburse Facet and the Facet Subsidiaries for such advances, solely from the Insurance Proceeds of the PDL Pre-Distribution Policies that cover such insured Facet Liabilities and that are received by PDL or its Subsidiaries. PDL and its Subsidiaries (i) shall, at all times until paid to Facet, hold Insurance Proceeds received for or with respect to insured Facet Liabilities in trust for the benefit of Facet; and (ii) shall promptly remit such Insurance Proceeds to Facet.

4.3 PDL Policies. PDL shall, to the extent that the PDL Policies cover the Facet Liabilities, after discussion with Facet, either (a) maintain the PDL Policies, (b) buy replacement insurance, or (c) purchase an extended reporting period endorsement for the PDL Policies. In each of (a), (b) and (c), such coverage shall be at the expense of Facet and be of a type and with a limit and terms and conditions similar to those in force under the PDL Policies as of the Effective Time and shall be maintained for a minimum of six (6) years after the Effective Time.

## **Article V**

### **Releases And Indemnification**

5.1 Release of Pre-Distribution Claims.

(a) Except as otherwise provided in this Agreement or any Ancillary Agreement, Facet, together with its Subsidiaries, executors, administrators, successors and assigns, does hereby, effective as of the Effective Time, remise, release and forever discharge PDL, its respective Affiliates and all Persons who at any time prior to the Effective Time were stockholders, directors, officers, agents or employees of PDL or any

19

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of its Affiliates (in each case, in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns, from all Liabilities existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Effective Time.

(b) Except as otherwise provided in this Agreement or any Ancillary Agreement, PDL, together with its respective Subsidiaries, executors, administrators, successors and assigns, does hereby, effective as of the Effective Time, remise, release and forever discharge Facet, its respective Affiliates and all Persons who at any time prior to the Effective Time were stockholders, directors, officers, agents or employees of Facet or any of its Affiliates (in each case, in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns, from all Liabilities existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Effective Time.

(c) Nothing contained in Section 5.1(a) and Section 5.1(b) shall impair or otherwise affect any right of any Party to enforce this Agreement or any Ancillary Agreement. In addition, nothing contained in Section 5.1(a) and Section 5.1(b) shall release any Party from:

(i) any Liability assumed by, or transferred, or assigned or allocated to, a Party or its respective Affiliates pursuant to or contemplated by this Agreement or any Ancillary Agreement;



(ii) any Liability provided in or resulting from any other Contract or understanding that is entered into after the Effective Time between one Party (and/or a member of such Party's Affiliates), on the one hand, and the other Party (and/or a member of such Party's Affiliates), on the other hand; and

(iii) any Liability that the Parties may have with respect to indemnification or contribution pursuant to this Agreement or otherwise for claims brought against the Parties by a Third Party, which Liability shall be governed by the provisions of this Article V and, if applicable, the appropriate provisions of the Ancillary Agreements.

(d) Each Party shall not, and shall not permit any of its Subsidiaries to, make any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or indemnification, against the other Party or any member of the other Party's Affiliates, or any other Person released pursuant to Section 5.1(a) and Section 5.1(b), with respect to any and all Liabilities released pursuant to Section 5.1(a) and Section 5.1(b). If a Party breaches this Section 5.1(d), such breaching Party shall be liable for all related expenses, including court costs, attorneys' fees, and all other legal expenses of the other Party.

20

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(e) It is the intent of each Party, by virtue of the provisions of this Section 5.1, to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the Effective Time, whether known or unknown, between one Party (and/or any Affiliate of such Party) and the other Party (and/or a member of such other Party) (including any contractual agreements or arrangements existing or alleged to exist between or among any such members on or before the Effective Time), except as otherwise set forth in this Section 5.1.

(f) If any Person associated with a Party (including any director, officer or employee of a Party) initiates an Action with respect to claims released by this Section 5.1, the Party with which such Person is associated shall indemnify the other Party against such Action in accordance with the provisions set forth in this Article V.

(g) At any time, at the request of a Party, each Party shall, and to the extent practicable, cause each other Person on whose behalf it released Liabilities pursuant to this Section 5.1, to execute and deliver releases reflecting the provisions hereof.

5.2 Indemnification by Facet. Except as otherwise provided in this Agreement or any Ancillary Agreement, following the Effective Time, Facet shall indemnify, defend and hold harmless PDL and its Affiliates and all Persons who at any time prior to the Effective Time were directors, officers, agents or employees of PDL or any of its Affiliates (in each case, in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns (collectively, the "PDL Indemnitees"), from and against any and all Liabilities and related losses of the PDL Indemnitees relating to, arising out of or resulting from any of the following:

(a) The failure of Facet, and its Affiliates or any other Person to pay, perform or otherwise promptly discharge after the Effective Time any Facet Liabilities in accordance with their respective terms;

(b) The Facet Liabilities (including any subsequently identified Facet Liabilities under Section 2.2(e));

(c) Any untrue statement, alleged untrue statement, omission or alleged omission of a material fact in the Form 10, resulting in a misleading statement, with respect to all information contained in the Form 10; and

(d) Any breach by Facet of this Agreement or any of the Ancillary Agreements.

5.3 Indemnification by PDL. Except as otherwise provided in this Agreement or any Ancillary Agreement, following the Effective Time, PDL shall indemnify, defend and hold harmless Facet, and its Affiliates and all Persons who are directors, officers, agents or employees of Facet or any of its Affiliates (in each case, in their respective

21

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capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns (collectively, the "Facet Indemnitees"), from and against any and all Liabilities and related losses of the Facet Indemnitees relating to, arising out of or resulting from any of the following items:

(a) The failure of PDL, its Affiliates or any other Person to pay, perform or otherwise promptly discharge after the Effective Time any Excluded Liabilities;

(b) The Excluded Liabilities; and

(c) Any breach by PDL of this Agreement or any of the Ancillary Agreements.

5.4 Reduction for Insurance Proceeds and Other Recoveries.

(a) The amount that any Party is required to provide indemnification (the "Indemnifying Party") to or on behalf of the Party entitled to such indemnification (the "Indemnitee") pursuant to this Article V, shall be reduced (retroactively or prospectively) by Insurance Proceeds or other amounts actually recovered from Third Parties on behalf of such Indemnitee in respect of the Liability or related loss. If an Indemnitee receives a payment as required by this Agreement from an Indemnifying Party in respect of any Liability or related loss (an "Indemnity Payment") and subsequently receives Insurance Proceeds in respect of such Liability or related loss, then such Indemnitee shall hold such Insurance Proceeds in trust for the benefit of the Indemnifying Party (or Indemnifying Parties) and shall pay to the Indemnifying Party, as promptly as practicable after receipt, a sum equal to the amount of such Insurance Proceeds received, up to the aggregate amount of any payments received from the Indemnifying Party pursuant to this Agreement in respect of such indemnifiable loss of such Insurance Proceeds.

(b) An insurer who would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurer or any other Third Party shall be entitled to a “windfall” (i.e., a benefit they would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification provisions hereof. Notwithstanding the foregoing, each Party shall be required to use reasonable best efforts to collect or recover any available Insurance Proceeds.

#### 5.5 Procedures For Indemnification of Third-Party Claims.

(a) If an Indemnitee shall receive notice or otherwise learn of the assertion by a Third Party (including any Governmental entity) of any claim or of the commencement by any such Person of any Action (collectively, a “Third-Party Claim”) with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnitee, such Indemnitee shall give such Indemnifying Party and each Party to this Agreement, written notice thereof as soon as reasonably practicable, but no later

22

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than thirty (30) days after becoming aware of such Third-Party Claim. Any such notice shall describe the Third-Party Claim in reasonable detail. If any Party shall receive notice or otherwise learn of the assertion of a Third-Party Claim which may reasonably be determined to be a Liability of the Parties, such Party shall give the other Party to this Agreement written notice thereof within thirty (30) days after becoming aware of such Third-Party Claim. Any such notice shall describe the Third-Party Claim in reasonable detail. Notwithstanding the foregoing, the failure of any Indemnitee or other Party to give notice as provided in this Section 5.5(a) shall not relieve the related Indemnifying Party of its obligations under this Article V, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice.

(b) An Indemnifying Party shall be entitled to participate in the defense of any Third-Party Claim, at such Indemnifying Party’s own expense and by such Indemnifying Party’s own counsel; provided that if the defendants in any such claim include both the Indemnifying Party and one or more Indemnitees and in such Indemnitees’ reasonable judgment a conflict of interest between such Indemnitees and such Indemnifying Party exists in respect of such claim, such Indemnitees shall have the right to employ separate counsel and in that event the reasonable fees and expenses of such separate counsel (but not more than one separate counsel reasonably satisfactory to the Indemnifying Party) shall be paid by such Indemnifying Party. Within thirty (30) days after the receipt of notice from an Indemnitee in accordance with Section 5.5(a) (or sooner, if the nature of such Third-Party Claim so requires), the Indemnifying Party shall notify the Indemnitee of its election whether the Indemnifying Party will assume responsibility for defending such Third-Party Claim. After notice from an Indemnifying Party to an Indemnitee of its election to assume the defense of a Third-Party Claim, such Indemnitee shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise, or settlement thereof, but the fees and expenses of such counsel shall be the expense of such Indemnitee.

(c) With respect to any Third-Party Claim, the Indemnifying Party and Indemnitees agree, and shall cause their respective counsel (if applicable), to cooperate fully (in a manner that will preserve all attorney-client privilege or other privileges) to mitigate any such claim and minimize the defense costs associated therewith.

(d) If an Indemnifying Party fails to assume the defense of a Third-Party Claim within thirty (30) days after receipt of written notice of such claim, the Indemnitee will, upon delivering notice to such effect to the Indemnifying Party, have the right to undertake the defense, compromise or settlement of such Third-Party Claim on behalf of and for the account of the Indemnifying Party subject to the limitations as set forth in this Section 5.5; provided, however, that such Third-Party Claim shall not be compromised or settled without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, delayed or conditioned. If the Indemnitee assumes the defense of any Third-Party Claim, it shall keep the Indemnifying Party reasonably informed of the progress of any such defense, compromise or settlement. The Indemnifying Party shall reimburse all such costs and expenses of the Indemnitee in the event it is ultimately determined that the Indemnifying Party is obligated to indemnify the Indemnitee with respect to such Third-Party Claim. In no event shall an Indemnifying

23

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Party be liable for any settlement effected without its consent, which consent will not be unreasonably withheld, delayed or conditioned.

#### 5.6 Additional Matters.

(a) Any claim on account of a Liability which does not result from a Third-Party Claim shall be asserted by written notice given by the Indemnitee to the related Indemnifying Party. Such Indemnifying Party shall have a period of thirty (30) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such sixty (60) day period, such Indemnifying Party shall be deemed to have accepted responsibility to make payment. If such Indemnifying Party rejects such claim in whole or in part, such Indemnitee shall be free to pursue such remedies as may be available to such party as contemplated by this Agreement and the Ancillary Agreements.

(b) In the event of payment by or on behalf of any Indemnifying Party to any Indemnitee in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee as to any events or circumstances in respect of which such Indemnitee may have any right, defense or claim relating to such Third-Party Claim against any claimant or plaintiff asserting such Third-Party Claim or against any other person. Such Indemnitee shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense (including allocated costs of in-house counsel and other in-house personnel) of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.

(c) In the event of an Action in which the Indemnifying Party is not a named defendant, if the Indemnifying Party shall so request, the Parties shall endeavor to substitute the Indemnifying Party for the named defendant, and add the Indemnifying Party as a named defendant if at all practicable. If such substitution or addition cannot be achieved for any reason or is not requested, the named defendant shall allow the Indemnifying Party to manage the Action as set forth in this section and subject to Section 5.5 with respect to Liabilities, the Indemnifying Party shall fully indemnify the named defendant against all costs of defending the Action (including court costs, sanctions imposed by a court, attorneys’ fees, experts’ fees and all other external expenses, and the allocated costs of in-house counsel and other in-house personnel), the costs of any judgment or settlement, and the cost of any interest or penalties relating to any judgment or settlement.

5.7 Survival of Indemnities. The rights and obligations of each Party and their respective Indemnitees under this Article V shall survive the sale or other transfer by any Party or its Affiliates of any assets or businesses or the assignment by it of any and all Liabilities.

## Article VI

### Certain Covenants And Other Agreements Of The Parties

6.1 Restriction on Employee Solicitation and Hiring. Following the transfer of the Facet Employees from PDL to Facet pursuant to this Agreement, none of PDL or Facet or their respective Subsidiaries from the Distribution Date through and including the one (1) year anniversary of the Distribution Date, without prior written consent of the applicable Party, may solicit, aid, encourage or induce any employee to terminate or breach an employment, contractual or other relationship with the other Party (or its Affiliates), hire or otherwise employ any employee of the other Party; provided, however, that nothing in this Section 6.1 shall be deemed to prohibit any hiring resulting from a general solicitation for employment through advertisements and search firms not specifically directed at employees of such other applicable Party; provided, further, that the applicable Party has not encouraged or advised such firm to approach any such employee.

6.2 Legal Names. As soon as reasonably practicable and in any event within one hundred eighty (180) days after the Distribution Date, each Party shall (i) cease to make any use of the other Party's respective name and any Trademarks related thereto or containing or comprising the foregoing, including any name or mark confusingly similar thereto or dilutive thereof (the "Marks"), (ii) take all steps necessary, and fully cooperate with the other Party and its Affiliates, to remove the Marks from any corporate, trade, and assumed names and cancel any recordation of such names with any Governmental entity, and change any corporate, trade, and assumed name that uses the Marks to a name that does not include the Marks or any variation, derivation, or colorable imitation thereof, and (iii) remove, strike over or otherwise obliterate all Marks from (or otherwise not use) in all materials owned by each Party and its Affiliates, including without limitation, any business cards, stationary, packaging materials, displays, signs, promotional and advertising materials, and other materials or media including any internet usage or domain names that include the Marks.

6.3 Preparation of Opening Facet Balance Sheet. As soon as practicable after the Distribution Date, the Parties shall cooperate in the preparation of the Opening Facet Balance Sheet, prepared on the same basis as the unaudited pro forma condensed combined balance sheet of Facet, dated as of September 30, 2008, included in the Form 10.

6.4 Amendment of Patent Licensing Master Agreements. The Parties shall cooperate and shall each use commercially reasonable efforts to:

(a) amend and restate the Patent Licensing Master Agreement between PDL and Genentech, Inc. ("Genentech"), dated September 25, 1998, as amended (the "Genentech PLMA"), and cause Facet to become a party to an agreement with Genentech that will allow Facet to obtain licenses to the GNE Licensed Patents (as that term is defined in the Genentech PLMA) on the same terms and conditions provided to PDL under the Genentech PLMA; and

(b) amend and restate the Patent Licensing Master Agreement between PDL and Celltech Therapeutics Limited (now UCB Celltech, "Celltech"), dated December 23, 1999 (the "Celltech PLMA"), and cause Facet to become a party to an agreement with Celltech that will allow Facet to obtain licenses to the Celltech Licensed Patents (as that term is defined in the Celltech PLMA) on the same terms and conditions provided to PDL under the Celltech PLMA.

6.5 Payment of Accrued Merit Bonuses. Facet shall recommend the amount, if any, of the merit bonus with respect to 2008 service to PDL prior to the Effective Time (a "2008 Merit Bonus") earned by each Facet Employee and each PDL employee whose employment PDL terminated after July 1, 2008 but before the Effective Time because PDL eliminated such employee's employment position in connection with a reduction in force (each such terminated employee, a "Terminated Transition Employee"), which recommendation shall be made in a manner consistent with the terms of PDL's 2008 Bonus Program and PDL's past practices. On or before January 31, 2009, Facet shall deliver to PDL the list of Facet Employees and Terminated Transition Employees who have earned a 2008 Merit Bonus, along with any supporting documentation requested by PDL, which list shall set forth opposite each such person's name the amount of the 2008 Merit Bonus recommended for each such Facet Employee or Terminated Transition Employee (the "Merit Bonus List"). PDL will review the Merit Bonus List promptly, consider the recommendations of Facet and prior to February 15, 2009, PDL shall pay to each Facet Employee and each Terminated Transition Employee listed on the Merit Bonus List such 2008 Merit Bonus as PDL deems appropriate; provided, however, that the aggregate amount of such 2008 Merit Bonuses which PDL shall pay to all Facet Employees and Terminated Transition Employees shall be Six Million Six Hundred Seventy-Five Thousand Eight Hundred Twenty-Eight Dollars (\$6,675,828).

## Article VII

### Confidentiality

7.1 Confidentiality.

(a) Notwithstanding any termination of this Agreement and subject to Section 7.2, for a period of seven (7) years after the Distribution Date, each Party agrees to hold, and to cause its respective Subsidiaries, directors, officers, employees, agents, accountants, counsel and other advisors and representatives to hold, in strict confidence, and undertake all reasonable precautions to safeguard and protect the confidentiality of, all Information concerning the other Party that is in its possession after the Distribution Date or furnished by the other Party or its respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives at any time pursuant to this Agreement, any Ancillary Agreement or otherwise, and shall not use any such Information other than for such purposes as shall be expressly permitted hereunder or thereunder, except, in each case, to the extent that such Information has been (i) in the public domain through no fault of such Party, their respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives, (ii) lawfully acquired from other sources, which are not bound by a confidentiality obligation, by such Party or their respective Subsidiaries, or (iii) independently generated without reference to any proprietary or confidential Information of the other Party.

- (b) Each Party agrees not to release or disclose, or permit to be released or disclosed, any such Information to any other Person, except its directors, officers, employees, agents, accountants, counsel and other advisors and representatives

who need to know such Information and who are informed and advised that the Information is confidential and subject to the obligations hereunder, except in compliance with Section 7.2. Without limiting the foregoing, when any Information is no longer needed for the purposes contemplated by this Agreement or any Ancillary Agreement, each Party will promptly after request of the other Party either (i) destroy all copies of the Information in such Party's possession, custody or control (including any that may be stored in any computer, word processor, or similar device, to the extent not commercially impractical to destroy such copies) including any copies, summaries, analyses, compilations, reports, extracts or other reproductions, in whole or in part, of such written, electronic or other tangible material or any other materials in written, electronic or other tangible format based on, reflecting or containing Information prepared by such Party, and/or (ii) return to the requesting Party, at the expense of the requesting Party, all copies of the Information furnished to such Party by or on behalf of the requesting Party. Notwithstanding the foregoing, each Party may maintain the confidential Information of the other Party that is contained in such Party's electronic back-up files that are created in the normal course of business pursuant to such Party's standard protocol for preserving its electronic records.

7.2 Protective Arrangements. In the event that either Party or their respective Affiliates, either (i) determines after consultation with counsel, in the opinion of such counsel that it is required by law to disclose any Information, or (ii) receives any demand under lawful process or from any Governmental entity to disclose or provide Information of the other Party or their respective Subsidiaries that is subject to the confidentiality provisions hereof, such Party shall notify the other Party prior to disclosing or providing such Information and shall cooperate at the expense of the requesting party (and to the extent legally permissible) in seeking any reasonable protective arrangements requested by such other Party. Subject to the foregoing, the Party that received such request may thereafter (i) furnish only that portion of the Confidential Information that is legally required, (ii) give notice to the other Party of the Information to be disclosed as far in advance as is practical, and (iii) exercise reasonable best efforts to obtain reliable assurance that the confidential nature of such Information shall be maintained.

## Article VIII

### Access To Information And Services

#### 8.1 Provision of Books and Records.

(a) Except as otherwise provided in any Ancillary Agreement, as soon as practicable after the Distribution Date, PDL and Facet shall cooperate to provide that originals of Facet Books and Records (including all documents and electronically stored information except e-mails or other electronic correspondence not readily available in hard copy) which solely relate to Facet or the conduct of the Facet Business, as the case may be, up to the Effective Time, are in the possession or control of Facet or a Facet Subsidiary.

(b) With respect to Facet Books and Records (including e-mails and other electronic correspondence not readily available in hard copy) that relate to both the Facet Business and the PDL Business (the "Combined Books and Records"), (i) the Parties shall use good faith efforts to divide as soon as practicable but no later than six (6) months following the Distribution Date such Combined Books and Records into the books and records which solely relate to PDL or the conduct of the PDL Business and those that relate solely to Facet and the Facet Business, as the case may be, up to the Effective Time, as appropriate, and (ii) to the extent such Combined Books and Records are not so divided, each Party shall keep and maintain copies of such Combined Books and Records as reasonably appropriate under the circumstances, subject to applicable confidentiality provisions hereof and of any Ancillary Agreement.

8.2 Access to Information. Except as otherwise provided in any Ancillary Agreement, after the Distribution Date, each Party shall provide the other Party and such other Party's authorized accountants, counsel and other designated representatives reasonable access and duplicating rights during normal business hours to all records, books, contracts, instruments, computer data and other data and Information relating to pre-Distribution operations of the Facet Business or PDL Business, as applicable, or within such Party's possession or control or such other Information reasonably necessary for the preparation, review or auditing for spin-out financials for such other Party (including using reasonable best efforts to give access to Persons or firms possessing Information) insofar as such access is reasonably required by such other Party for the conduct of the Facet Business or PDL Business, as applicable, subject to appropriate restrictions for classified or privileged information.

8.3 Production of Witnesses. At all times after the Effective Time, each of Facet and PDL shall use reasonable best efforts to make available to the other, upon prior written request, its and its Subsidiaries' officers, directors, employees and agents as witnesses to the extent that such Persons may reasonably be required in connection with any Action.

#### 8.4 Privileged Matters. To allocate the interests of each Party with respect to privileged information, the Parties agree as follows:

(a) PDL shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged information which relates solely to the PDL Business, whether or not the privileged information is in the possession of or under the control of PDL or Facet. PDL shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged information that relates solely to the subject matter of any claims constituting Liabilities of PDL and its Affiliates and all Persons who at any time prior to or as of the Effective Time were directors, officers, agents or employees of PDL or any of its Affiliates (in each case, in their respective capacities as such), in each case, together with their respective heirs, executors, administrators, successors and assigns, now pending or which may be asserted in the future, in any lawsuits or other Actions initiated against or by PDL, whether or not the privileged information is in the possession of or under the control of PDL or Facet.

(b) Facet shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged information which relates solely to the Facet Business, whether or not the privileged information is in the possession of or under the control of PDL or Facet. Facet shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged information which relates solely to the subject matter of any claims constituting Facet Liabilities, now pending or which may be asserted in the future, in any lawsuits or other Actions initiated against or by Facet, whether or not the privileged information is in the possession of Facet or under the control of PDL or Facet.

(c) PDL and Facet agree that they shall have a shared privilege, with equal right to assert or waive, subject to the restrictions of this Section 8.4, with respect to all privileges not allocated pursuant to the terms of Sections 8.4(a) and (b). All privileges relating to any claims, proceedings, litigation, disputes or other matters which involve both PDL and Facet in respect of which PDL and Facet retain any responsibility or liability under this Agreement shall be subject to a shared privilege.

(d) No Party may waive any privilege which could be asserted under any applicable law, if the other Party has a shared privilege, without the consent of the other Party, except to the extent reasonably required in connection with any litigation with Third Parties or as provided in Section 8.4(e). Such consent shall be in writing, or shall be deemed to be granted unless written objection is made within twenty (20) days after notice upon the other Party requesting such consent.

(e) In the event of any litigation or dispute between the Parties and any of its Affiliates, either Party may waive a privilege in which the other Party has a shared privilege, without obtaining the consent of the other Party, provided that such waiver of a shared privilege shall be effective only as to the use of Information with respect to the litigation or dispute between the Parties and any of its Affiliates, and shall not operate as a waiver of the shared privilege with respect to Third Parties.

(f) If a dispute arises between the Parties regarding whether a privilege should be waived to protect or advance the interest of either Party, each Party agrees that it shall negotiate in good faith, shall endeavor to minimize any prejudice to the rights of the other Party, and shall not unreasonably withhold consent to any request for waiver by the other Party. Each Party specifically agrees that it will not withhold consent to waiver for any purpose except to protect its own legitimate interests.

(g) Upon receipt by any Party of any subpoena, discovery or other request which arguably calls for the production or disclosure of Information subject to a shared privilege or as to which the other Party has the sole right hereunder to assert a privilege, or if any Party obtains knowledge that any of its current or former directors, officers, agents or employees has received any subpoena, discovery or other request which arguably calls for the production or disclosure of such privileged information, such Party shall promptly notify the other Party of the existence of the request and shall provide the other Party a reasonable opportunity to review the Information and to assert

29

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any rights it may have under this Section 8.4 or otherwise to prevent the production or disclosure of such privileged information.

(h) The transfer of all Information pursuant to this Agreement is made in reliance on the agreement of PDL and Facet, as set forth in this Section 8.4 and elsewhere in this Agreement, to maintain the confidentiality of privileged information and to assert and maintain applicable privileges. The access to Information being granted pursuant to Sections 8.1 and 8.2, the agreement to provide witnesses and individuals pursuant to Section 8.3 and the transfer of privileged information between the Parties pursuant to this Agreement shall not be deemed a waiver of any privilege that has been or may be asserted under this Agreement or otherwise.

## Article IX

### Dispute Resolution

9.1 Disputes and Negotiation. PDL and Facet recognize that disputes as to certain matters may from time to time arise during the effectiveness of this Agreement and the Ancillary Agreements which relate to either Party's rights and obligations hereunder or thereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising under this Agreement and the Ancillary Agreements in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Article IX if and when a dispute arises under this Agreement or the Ancillary Agreements. In the event of a dispute between the Parties, a designated representative of each of PDL and Facet will meet as reasonably requested by either Party to review any such dispute. If the disagreement is not resolved by the designated representatives by mutual agreement within thirty (30) days after a meeting to discuss the disagreement, either Party may at any time thereafter provide the other Party written notice specifying the terms of such disagreement in reasonable detail. Upon receipt of such notice, the chief executive officers of PDL and Facet shall meet at a mutually agreed upon time and location for the purpose of resolving such disagreement. The chief executive officers of PDL and Facet will discuss such disagreement and/or negotiate for a period of up to sixty (60) days in an effort to resolve such disagreement or negotiate an acceptable interpretation or revision of the applicable portion of this Agreement or the Ancillary Agreements mutually agreeable to both Parties, without the necessity of formal procedures relating thereto. During the course of such negotiations, the Parties will reasonably cooperate and provide information that is not materially confidential in order that each of the Parties may be fully informed with respect to the issues in dispute. The institution of a formal proceeding, including arbitration under Section 9.2, to resolve the disagreement may occur by written notice to the other Party only after the earlier of: (i) the chief executive officers of PDL and Facet mutually agreeing that resolution of the disagreement through continued negotiation is not likely to occur; or (ii) the expiration of the sixty (60) day negotiation period.

9.2 Dispute Resolution and Arbitration. Except as provided in the Non-Exclusive Cross-License Agreement for any disputes concerning Intellectual Property,

30

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disputes arising out of, relating to or in connection with this Agreement or the Ancillary Agreements, or in relations between the parties with respect to the subject matter hereof, for any reason or under any circumstances, will be finally settled by a single arbitrator in a binding arbitration in accordance with the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Arbitration Rules and Procedures (the "JAMS Rules"). Upon receipt of written notice by one Party to the other of the existence of a dispute, the Parties shall, within thirty (30) days conduct a meeting of one or more senior executives of each

Party, with full settlement authority, in an attempt to resolve the dispute. Each Party shall make available appropriate personnel to meet and confer with the other Party reasonably within the thirty-day period. Upon the expiration of the thirty-day period, or upon the termination of discussions between the senior executives, either Party may elect arbitration of any dispute by written notice to the other (the “Arbitration Notice”). The arbitration shall be held in San Francisco, California before one (1) arbitrator from JAMS having substantial experience as a jurist and mediator with significant disputes in the biotechnology and/or pharmaceuticals industry selected by the mutual agreement of the Facet and the PDL; provided, however, that if such parties cannot agree on an arbitrator within thirty (30) days of the Arbitration Notice, either Party may request JAMS select the arbitrator, and JAMS shall select an arbitrator pursuant to the procedure set out by the JAMS rules; provided, however, that the arbitrator selected by JAMS shall be a former judge with at least fifteen (15) years experience addressing as a jurist and/or mediator significant disputes in the biotechnology and/or pharmaceutical industry. The arbitration shall be administered by JAMS pursuant to its AAA Rules. Judgment on the arbitration award may be entered in any court having jurisdiction. The arbitrator may, in the arbitration award, allocate for payment by the non-prevailing party all or part of the costs of the arbitration, including fees of the arbitrator and the reasonable attorneys’ fees and costs incurred by the prevailing party. This Section shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. In respect of any actions for injunctive or other equitable relief hereunder, any action or proceeding may be brought against any Party in the state and federal courts located in the county of San Mateo, California and each of the parties consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein.

## **Article X**

### **Further Assurances**

#### **10.1 Further Assurances.**

(a) In addition to and without limiting the actions specifically provided in this Agreement, each of the Parties shall use its reasonable best efforts, prior to, on and after the Distribution Date, to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable laws, regulations and agreements to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements.

31

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(b) Without limiting the foregoing, prior to, on and after the Distribution Date, each Party shall cooperate with the other Party, and without any further consideration, but at the expense of the requesting Party, to execute and deliver, or use its reasonable best efforts to cause to be executed and delivered, all instruments, including instruments of conveyance, assignment and transfer, and to make all filings with, and to obtain all consents, approvals or authorizations of, any Governmental entity or any other Person under any permit, license, agreement, indenture or other instrument (including any Consents or Governmental Approvals), and to take all such other actions as such Party may reasonably be requested to take by the other Party from time to time, consistent with the terms of this Agreement and the Ancillary Agreements, in order to effectuate the provisions and purposes of this Agreement and the Ancillary Agreements and the transfers of the Facet Assets and the assignment and assumption of the Facet Liabilities and the other transactions contemplated hereby and thereby.

## **Article XI**

### **Termination**

11.1 Termination. Notwithstanding anything to the contrary herein, this Agreement (including Article V (Indemnification)) may be terminated and the Separation and Distribution may be amended, modified or abandoned at any time prior to the Distribution by and in the sole discretion of PDL without the approval of Facet or the stockholders of PDL. In the event of such termination, no Party shall have any Liability to the other Party or any other Person. After the Distribution, this Agreement may not be terminated except by an agreement in writing signed by each Party.

## **Article XII**

### **Miscellaneous**

12.1 Governing Law; Jurisdiction. This Agreement shall be deemed to have been made in the State of Delaware and its form, execution, validity, construction and effect shall be determined in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof.

12.2 Assignability. The provisions of this Agreement, each Ancillary Agreement and the obligations and rights hereunder shall be binding upon, inure to the benefit of and be enforceable by (and against) the Parties and their respective successors and permitted transferees and assigns. Notwithstanding the foregoing, this Agreement shall not be assignable, in whole or in part, by any Party without the prior written consent of the other Party, and any attempt to assign any rights or obligations arising under this Agreement without such consent shall be null and void; provided, however, that a Party may assign this Agreement to an Affiliate controlled by such Party or in connection with a merger transaction in which such Party is not the surviving entity or in connection with the sale or other transfer by such Party of all or substantially all of its assets, and upon the effectiveness of such assignment, the assigning Party shall be released from all of its obligations under this Agreement if the surviving entity of such merger or the transferee

32

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of such assets shall agree in writing, in form and substance reasonably satisfactory to the other Party, to be bound by all terms of this Agreement as if named as a “Party” hereto.

12.3 Third Party Beneficiaries. Except for the indemnification rights under this Agreement of any PDL Indemnatee or Facet Indemnatee in their respective capacities as such, (a) the provisions of this Agreement and each Ancillary Agreement are solely for the benefit of the Parties and are not intended to confer upon any Person except the Parties any rights or remedies hereunder, and (b) there are no Third Party beneficiaries of this Agreement or any Ancillary Agreement and neither this Agreement nor any Ancillary Agreement shall provide any Third Party with any remedy, claim, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement or any Ancillary Agreement.

12.4 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the Party to be notified, (b) when sent by confirmed facsimile, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth below (or at such other addresses as shall be specified by notice given in accordance with this Section):

If to PDL, to: PDL BioPharma, Inc.  
Attention: General Counsel  
932 Southwood Boulevard  
Incline Village, NV 89451  
Facsimile: 775-832-8501

with a copy to: Shearman & Sterling LLP  
(not to constitute notice) Attention: Peter Lyons  
599 Lexington Avenue  
New York, NY 10022  
Facsimile: 212-848-7179

If to Facet, to: Facet Biotech Corporation  
Attention: General Counsel  
1400 Seaport Boulevard  
Redwood City, CA 94063  
Facsimile: 650-454-1468

with a copy to: DLA Piper LLP (US)  
(not to constitute notice) Attention: Howard Clowes  
153 Townsend Street, Suite 800  
San Francisco, CA 94107-1957  
Facsimile: 415- 659-7410

33

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12.5 Severability. If any provision of this Agreement or any Ancillary Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby or thereby, as the case may be, is not affected in any manner adverse to any Party. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to affect the original intent of the Parties.

12.6 Expenses. Except as expressly set forth in this Agreement or in any Ancillary Agreement, whether or not the Separation or the Distribution is consummated, all Third Party fees, costs and expenses paid or incurred in connection with the Separation and Distribution shall be paid by PDL but only to the extent such fees arise or were paid or incurred prior to the Effective Time.

12.7 Survival of Covenants. Except as expressly set forth in any Ancillary Agreement, all covenants, representations and warranties contained in this Agreement and each Ancillary Agreement, and liability for the breach of any obligations contained herein, shall survive the Effective Time and remain in full force and effect in accordance with their applicable terms.

12.8 Waivers of Default. The failure of either Party to require strict performance by the other Party of any provision in this Agreement or any Ancillary Agreement will not waive or diminish such Party's right to demand strict performance thereafter of that or any other provision hereof.

12.9 Specific Performance. The Parties agree that irreparable damage would occur in the event that the provisions of this Agreement were not performed in accordance with their specific terms. Accordingly, it is hereby agreed that the Parties shall be entitled to (a) an injunction or injunctions to enforce specifically the terms and provisions hereof in any arbitration in accordance with Article IX, (b) provisional or temporary injunctive relief in accordance therewith in the District of Delaware, and (iii) enforcement of any such award of an arbitral tribunal in any court of the United States, or any other any court or tribunal sitting in any state of the United States or in any foreign country that has jurisdiction, this being in addition to any other remedy or relief to which they may be entitled.

12.10 Amendments. This Agreement may not be modified or amended except by an agreement in writing signed by each of the Parties.

34

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12.11 Schedules. All schedules attached hereto are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Capitalized terms used in the schedules hereto but not otherwise defined therein will have the respective meanings assigned to such terms in this Agreement.

12.12 Construction.

(a) This Agreement has been prepared jointly and shall not be strictly construed against either Party.

(b) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(c) Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections,” “Exhibits” and “Attachments” are intended to refer to Articles and Sections of , and Exhibits and Attachments, to this Agreement.

(d) The words “include” and “including,” shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

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

12.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. Any executed counterpart delivered by facsimile or other means of electronic transmission shall be deemed an original for all purposes.

[SIGNATURE PAGE FOLLOWS]

35

IN WITNESS WHEREOF, the Parties have caused this Separation and Distribution Agreement to be executed by their duly authorized representatives as of the day and year first above written.

**PDL BioPharma, Inc.,**  
a Delaware corporation

By: /s/ John P. McLaughlin

Name: John P. McLaughlin

Title: Senior Advisor

By: /s/ Andrew Guggenhime

Name: Andrew Guggenhime

Title: Senior Vice President and  
Chief Financial Officer

**Facet Biotech Corporation,**  
a Delaware corporation

By: /s/ Faheem Hasnain

Name: Faheem Hasnain

Title: President and Chief Executive Officer

**SEPARATION AND DISTRIBUTION AGREEMENT**  
**SIGNATURE PAGE**



## Transition Services Agreement

**PDL BioPharma, Inc.,**  
a Delaware corporation

and

**Facet Biotech Corporation,**  
a Delaware corporation

Dated as of December 18, 2008

## Transition Services Agreement

This Transition Services Agreement (this “Agreement”) is entered into as of December 18, 2008, by and between PDL BioPharma, Inc., a Delaware corporation (“PDL”), and Facet Biotech Corporation, a Delaware corporation (“Facet”), each a “Party” and together, the “Parties”. Capitalized terms not defined herein shall have the meaning set forth in that certain Separation and Distribution Agreement dated as of December 17, 2008 by and between the Parties, as amended or otherwise modified from time to time (the “Separation Agreement”). This Agreement shall be effective on the Distribution Date, as defined in the Separation Agreement.

### Recitals:

WHEREAS, the Board of Directors of PDL has determined that it is appropriate, desirable and in the best interests of PDL and its stockholders to separate PDL into two separate, independent and publicly traded companies;

WHEREAS, to effect this separation the Parties entered into the Separation Agreement;

WHEREAS, the Parties have agreed to enter into this Agreement in order for PDL to assist Facet, and for Facet to assist PDL, each for a period from and after the Distribution Date, by providing to Facet and PDL, respectively, certain services and support not otherwise specified in the Separation Agreement or any other Ancillary Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

### Article 1 Definitions

As used in this Agreement, the following capitalized terms shall have the following meanings:

- 1.1 “Additional Service” shall have the meaning set forth in Section 2.7(a).
- 1.2 “Agreement Dispute” shall have the meaning set forth in Section 11.
- 1.3 “Business” shall mean the PDL Business or the Facet Business, as applicable.
- 1.4 “Default Interest Rate” shall have the meaning set forth in Section 3.2(b).
- 1.5 “Due Date” shall have the meaning set forth in Section 3.2(a).
- 1.6 “Facet Project Manager” shall have the meaning set forth in Section 2.9.
- 1.7 “Facet Services” shall mean the enumerated services described on Schedule B attached hereto.

- 1.8 “Fee” or “Fees” shall have the meaning set forth in Section 3.1(a).

1.9 “Force Majeure” shall mean, with respect to a Party, an event beyond the reasonable control of such Party (or any Person acting on its behalf), which by its nature could not have been foreseen by such Party (or such Person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, earthquakes, hurricanes, riots, pandemics, fires, sabotage, strikes, lockouts, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism.

- 1.10 “PDL Project Manager” shall have the meaning set forth in Section 2.9.
- 1.11 “PDL Services” shall mean the enumerated services described on Schedule A attached hereto.
- 1.12 “Schedules” shall mean Schedule A and Schedule B attached hereto.
- 1.13 “Service” shall mean any of the Facet Services or the PDL Services, as applicable.

- 1.14 “Service Provider” shall mean PDL with respect to the PDL Services, and Facet with respect to the Facet Services.
- 1.15 “Service Recipient” shall mean Facet with respect to the PDL Services, and PDL with respect to the Facet Services.
- 1.16 “Services Group” shall mean any Services or group of Services identified on one of the Schedules for which a single, separate Fee is specified on such Schedule.
- 1.17 “Services Term” shall have the meaning set forth in Section 4.1.

## Article 2 Services

### 2.1 Scope of Services.

- (a) Facet hereby retains PDL to provide, and PDL hereby agrees to provide, the PDL Services to Facet or any of its Subsidiaries, as designated by Facet, during the relevant Services Term.
- (b) PDL hereby retains Facet to provide, and Facet hereby agrees to provide, the Facet Services to PDL or any of its Subsidiaries, as designated by PDL, during the relevant Services Term.
- (c) Notwithstanding anything to the contrary in this Agreement, (i) the PDL Services shall be available to Facet or any of its Subsidiaries only for the purposes of conducting the Facet Business substantially in the same manner as it was conducted immediately prior to the Distribution Date; and (ii) the Facet Services shall be available to PDL or any of its Subsidiaries

2

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only for the purposes of conducting the PDL Business substantially in the same manner as it was conducted immediately prior to the Distribution Date.

2.2 Provision of Services. The PDL Services may be directly provided by PDL or may be provided through any of its Affiliates or subcontractors, and the Facet Services may be directly provided by Facet or may be provided through any of its Affiliates or subcontractors; provided, however, that the applicable Service Provider shall remain responsible, in accordance with this Agreement, for performance of any Service it causes to be so provided.

2.3 No Assumption or Modification of Obligations. Nothing herein shall be deemed to (a) constitute the assumption by Service Provider or any of its Affiliates, or the agreement to assume, any duties, obligations or liabilities of Service Recipient or its Affiliates whatsoever; or (b) alter, amend or otherwise modify any obligation of PDL or Facet, as the case may be, under the Separation Agreement.

2.4 Application of Resources. Unless otherwise expressly required under the terms of the Separation Agreement or any Schedules, or otherwise agreed to by the Parties in writing, in providing the Services, Service Provider or its Affiliates shall not be obligated to: (a) expend funds and other resources beyond levels that would be customary and reasonable for any other nationally recognized service provider to perform services that are similar to the relevant Services; (b) maintain the employment of any specific employee or subcontractor; provided, however that Service Provider shall use commercially reasonable efforts to provide a replacement with the necessary skill and expertise; (c) purchase, lease or license any additional (measured as of the date hereof) equipment or materials (but expressly excluding any renewal or extension of any leases or licenses required for Service Provider to perform the relevant Services during the relevant Services Term); (d) pay any of Service Recipient’s costs related to its or any of its Subsidiaries’ receipt of the Services; (e) lend any funds to a Service Recipient or its Subsidiaries; or (f) make any payments or disbursements on behalf of Service Recipient, except to the extent Service Recipient has previously delivered to Service Provider sufficient funds to make any such payment or disbursement.

2.5 Performance of Services. Subject to the other terms (a) in this Agreement setting forth and circumscribing Service Provider’s performance obligations hereunder (including in this Article 2 and in Article 6), and (b) in the relevant Schedules, each Service Provider shall perform the Services required to be provided by it hereunder in a manner specifically described in the relevant Schedules, or, to the extent not so described in such Schedules, in a manner that is substantially the same in nature, accuracy, quality, completeness, timeliness, responsiveness and efficiency with how such relevant Services have been rendered in support of the Facet Business and/or the PDL Business prior to the Distribution Date. To the extent that either PDL or Facet determines that any sharing of information or historical knowledge would be commercially detrimental in any material respect, violate any Law or agreement or waive any attorney-client privilege, the work product doctrine or other applicable privilege, the Parties shall take all reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence.

2.6 Transitional Nature of Services; Changes. The Parties acknowledge the transitional nature of the Services and agree that, notwithstanding anything to the contrary

3

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herein, each Service Provider may make changes from time to time in the manner of performing the Services if such Service Provider is making similar changes in performing similar services for itself and/or its Subsidiaries; provided that Service Provider must provide Service Recipient with at least thirty (30) days prior written notice of material changes and reasonably cooperate with Service Recipient in adjusting to such change.

2.7 Additional Services; Extension of Services Terms. In the event that the Parties identify and agree upon (a) an additional service to be provided under this Agreement, as well as the related fees and other specific terms and conditions applicable thereto (an “Additional Service”), or (b) an extension of any particular Service Term for any Services Group, as well as the related fees and other specific terms and conditions applicable thereto, the Parties shall execute an amendment to this Agreement that provides for the substitution of the relevant Schedule, or additions of supplements to the relevant Schedule, in order to describe such Additional Service or extension, and the agreed upon related fees and other specific terms and conditions applicable

thereto. It is understood that the Service Provider has no obligation to provide Additional Services and may reject any request by any Service Recipient for Additional Services for any reason or for no reason.

2.8 **Impracticability.** Subject to the provisions of Section 2.10, Service Provider shall not be required to provide any Service to the extent: (a) that the performance of the Services would (i) require Service Provider or any of its Subsidiaries to violate any applicable Laws (including any applicable codes or standards of conduct established by any Governmental Entity with respect to their activities subject to the jurisdiction of such Governmental Entity) or any internal policy reasonably adopted in order to comply with any applicable Laws; (ii) result in the breach of any software license, lease, or other Contract; or (iii) require prior approval of a Governmental Entity (except to the extent such approval has already been obtained); or (b) that Service Provider cannot provide such Service due to a Force Majeure event; provided, however that Service Provider shall resume such Service as soon as practicable after such Force Majeure event..

2.9 **Project Managers.** PDL shall designate from time to time at least one individual, and shall inform Facet of the identity of such individual, to whom all of Facet's communications may be addressed with respect to the PDL Services and who has authority to act for and bind PDL in all aspects with respect to the PDL Services (the "**PDL Project Manager**"). Facet shall designate from time to time at least one individual and shall inform PDL of the identity of such individual, to whom all of PDL's communications may be addressed with respect to the Facet Services and who has authority to act for and bind Facet in all aspects with respect to the Facet Services (the "**Facet Project Manager**"). The initial PDL Project Manager designated by PDL shall be Cris Larson, Chief Financial Officer, and the initial Facet Project Manager designated by Facet shall be Herb Cross, Corporate Controller.

2.10 **Cooperation.** In the event that there is nonperformance of any Service as a result of impracticability pursuant to Section 2.8, the Parties agree to work together in good faith to arrange for an alternative means by which the applicable Service Recipient may obtain, at its sole cost and expense, the Service so affected. The Service Provider shall cooperate with the Service Recipient in connection with the performance of the Services, including producing on a timely basis all Contracts, documents and other information that is reasonably requested with respect to

4

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the performance of Services; provided, however, that such cooperation shall not unreasonably disrupt the normal operations of the Service Recipient or its respective Subsidiaries.

2.11 **Independent Contractor Relationship.** The relationship of the Parties hereunder is that of independent contractors, and nothing in this Agreement is intended to, or shall be construed to, create a partnership, agency, joint venture, employment or similar relationship.

### **Article 3**

#### **Pricing**

3.1 **Fees.** Except as explicitly stated in Schedule B for certain Facet Services, in consideration of Services performed pursuant to this Agreement, the Parties shall pay the applicable fees (individually a "**Fee**" and collectively the "**Fees**") as follows:

- (a) by PDL to Facet, at \$125.00/hour/person for the time spent by employees within Facet performing the Facet Services; and
- (b) by Facet to PDL, at \$125.00/hour/person for the time spent by employees within PDL performing the PDL Services.

3.2 **Payment Procedures.** If Fees are payable pursuant to Section 3.1:

(a) Service Provider shall invoice Service Recipient on a monthly basis for all Fees accrued with respect to the prior month. Fees shall be payable by Service Recipient within thirty (30) days after Service Recipient's receipt of an invoice (the "**Due Date**"). All amounts (i) payable pursuant to the terms of this Agreement shall be paid to Service Provider as directed by Service Provider, and (ii) due and payable hereunder shall be invoiced and paid in U.S. dollars, except as may be expressly provided in any relevant Schedule. A Service Recipient's obligation to make any required payments under this Agreement shall not be subject to any unilateral right of offset, set-off, deduction or counterclaim, however arising.

(b) **Default Interest Rate.** Subject to the provisions of Section 3.2(c), amounts not paid on or before the Due Date shall be payable with accrued interest thereon, from the date originally due, at the annual rate announced by the Bank of America (or any successor) as its prime rate in effect on the date that such payment was first due plus two percent (2%).

(c) **Disputes.** In the event that Service Recipient disputes the accuracy of any invoice or portion thereof, Service Recipient shall provide Service Provider on or prior to the Due Date written notice of the disputed amounts, together with a statement of the particulars of the dispute. Should Service Recipient fail to provide notice of any disputed amounts on or before the Due Date, the amounts set forth on the invoice shall be owed with interest at the Default Interest Rate from the Due Date until payment is received. Should Service Recipient provide the required information on or before the Due Date, Service Provider shall have thirty (30) days following receipt of the required information to reject Service Recipient's modified invoice (or portion thereof) by providing Service Recipient notice of such rejection within such 30-day period. Should Service Provider fail to provide such notice within the time period allowed, Service Recipient's modified invoice (or portion thereof) shall be deemed to be the correct invoice. Should Service Provider provide the required notice within such 30-day period,

5

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resolution of the disputed invoice shall be in accordance with the provisions of Article 11 hereof. If Service Recipient has underpaid the amount actually due, Service Recipient shall remit to the Service Provider, within five (5) business days after receipt of the determination from Service Provider, any amount due plus interest at the Default Interest Rate from the Due Date until paid. Notwithstanding any disputed invoice or portion thereof, Service Recipient shall nevertheless pay when due any undisputed amount of such invoice to Service Provider.

3.3 **Taxes.** If any Governmental Entity shall impose a tax on the Services rendered to a Service Recipient or its Subsidiaries by Service Provider hereunder, Service Recipient agrees to pay, or remit to Service Provider so that Service Provider may pay, the amount of such tax imposed now or in the future on the Services rendered to Service Recipient or its Subsidiaries by Service Provider under this Agreement. Notwithstanding anything to the

contrary contained in this Agreement, Service Recipient shall have no liability for, and shall not be obligated to pay for, any property taxes of any kind or type applicable to the property of Service Provider or any of its Subsidiaries or any income taxes of any kind or type applicable to the income of Service Provider or any of its Subsidiaries, except as may be expressly provided in any relevant Schedule.

3.4 **Expenses.** In addition to the payment of all Fees, at the end of each month during the Services Term, Service Recipient shall reimburse Service Provider for all reasonable out-of-pocket costs and expenses incurred by Service Provider or its Subsidiaries in connection with providing the Services (including pass-through costs for third party contractors and travel-related expenses). Any travel-related expenses incurred in performing the Services shall be incurred and charged to Service Recipient in accordance with Service Provider's then applicable business travel policies.

## **Article 4**

### **Services Term; Termination**

4.1 **Services Term.** The performance of the Services shall commence on the Distribution Date and shall expire as set forth on Schedule A or Schedule B, as applicable, with respect to each such Service, unless earlier terminated pursuant to Section 4.2 hereof (the "Services Term").

4.2 **Termination.** The obligations under this Agreement may be terminated prior to the expiration of the relevant Services Term only as provided on Schedule A or Schedule B, as applicable, with respect to each such Service.

4.3 **Rights and Obligations Upon Termination.** Upon expiration of the Services Term or in the event of a termination pursuant to Section 4.2, no Party, nor any of its Affiliates, shall have any liability or further obligation to any other Party or any of its Affiliates pursuant to this Agreement, except: (a) that the provisions of Sections 3 (to the extent of amounts accrued thereunder through the date of such expiration or termination), 4.3, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 (as well as in each case associated defined terms) shall survive any such expiration or termination and not be extinguished thereby; and (b) any Party nevertheless shall be entitled to seek any remedy to which it may be entitled at law or in equity for the violation or breach by the

other Party of any agreement, covenant, representation, warranty, or indemnity contained in this Agreement that occurs prior to such expiration or termination.

## **Article 5**

### **Return Of Leased Property Or Licensed Software**

Service Recipient shall be liable for all costs and expenses incurred by Service Provider or any of its Subsidiaries resulting from any delay or failure of Service Recipient to return to Service Provider or any licensor, as applicable, any leased property or licensed software that is included as part of the Services provided to such Service Recipient upon (a) the termination of the relevant Services as provided herein, or (b) the expiration of the term of the applicable lease or license, provided that Services Provider has provided Service Recipient with at least sixty (60) days prior written notice of such expiration.

## **Article 6**

### **Internal Controls And Procedures**

In addition to the record retention requirements of the Separation Agreement, with respect to the Services for which each Service Provider is responsible, such Service Provider shall maintain and comply with such internal controls and procedures as are necessary to comply with the Sarbanes-Oxley Act of 2002 or as otherwise agreed by the Parties to be implemented by the Parties to comply with internal controls and procedures or applicable Law. In the event a Service Recipient requires a change to the internal controls or procedures, or requires the implementation of additional internal controls or procedures, related to the Services required to be provided to such Service Recipient in order for such Service Recipient to comply with changes to applicable Law, Service Provider shall change or add to such Service Provider's internal controls or procedures related to such Services as reasonably requested by such Service Recipient; provided, however, in connection with a Service Provider changing or adding to internal controls or procedures as required by the foregoing, Service Recipient shall pay for any and all additional costs and expenses associated with the implementation or maintenance of the applicable change or addition; provided further, however, that if such change or addition is required for the compliance by both Parties with a Law applicable to both Parties, the Parties shall negotiate in good faith an equitable sharing of the costs and expenses associated with such change or addition.

## **Article 7**

### **Books And Records**

The Parties shall keep and maintain books, records, accounts and other documents sufficient to reflect accurately and completely the transactions conducted, and all associated costs incurred, pursuant to this Agreement. Such records shall include receipts, invoices, memoranda, vouchers, inventories, timesheets and accounts pertaining to the Services, as well as complete copies of all contracts, purchase orders, service agreements and other such arrangements entered into in connection therewith.

## **Article 8**

### **Compliance With Laws And Governmental Requirements**

Each Party shall be responsible for compliance with all Laws affecting its Business. Each Service Recipient shall be responsible for any use such Service Recipient may make of the Services to assist it in complying with applicable Laws. Each Service Provider shall comply with (a) all Laws applicable to the provision by it of the Services hereunder, and (b) the accounting and reporting requirements of any Governmental Entity having jurisdiction over it or any Party with respect to their respective activities related to such Service Provider's performance of the Services.

## **Article 9**

### **Disclaimer And Limitation Of Liability**

9.1 EACH PARTY ACKNOWLEDGES AND AGREES (A) THAT ALL SERVICES ARE PROVIDED BY SERVICE PROVIDER ON AN “AS IS” BASIS, AND (B) THAT NEITHER SERVICE PROVIDER MAKES ANY REPRESENTATIONS OR WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, TO SERVICE RECIPIENT OR ANY OF ITS AFFILIATES WITH RESPECT TO THE SERVICES, ANY EQUIPMENT OR MATERIALS PROVIDED UNDER THIS AGREEMENT, OR OTHERWISE HEREUNDER, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

9.2 NO PARTY SHALL UNDER ANY CIRCUMSTANCES BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS OR REVENUE, LOSS OF BUSINESS, LOSS OF USE OR OF DATA, INTERRUPTION OF BUSINESS OR OTHERWISE) RESULTING OR ARISING FROM THE SERVICES, ANY PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR TERMINATION OF THE SERVICES REGARDLESS OF WHETHER SUCH DAMAGES OR OTHER RELIEF ARE SOUGHT BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEPT TO THE EXTENT THAT ANY SUCH DAMAGES RELATE TO A CLAIM FOR INDEMNIFICATION PURSUANT TO ARTICLE 10, A BREACH OF ANY OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT OR THE SEPARATION AGREEMENT, OR FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE SERVICE PROVIDER OR ITS AFFILIATES.

## **Article 10**

### **Indemnity**

10.1 Service Recipient Indemnity. Service Recipient hereby agrees to indemnify, defend and hold harmless Service Provider and each of its Affiliates from and against any and all claims, losses, demands, liabilities, costs and expenses (including reasonable attorneys’ fees and costs and expenses related thereto) suffered or incurred by Service Provider or any of its Affiliates as a result of or in connection with any third party claims to the extent caused, in whole or in part, by the fraud, gross negligence or willful misconduct of Service Recipient or any of its Affiliates in its receipt of the Services or in its provision to Service Provider or any of its Affiliates of any information reasonably required for performance of the Services by Service

8

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Provider or any of its Affiliates. In no event shall the aggregate liability of Service Recipient and its Affiliates to Service Provider and its Affiliates, for any damages concerning Service Recipient’s or its Subsidiaries’ receipt of the Services or any other matter arising out of, or related to, this Agreement (regardless of whether any such claim for such damages is based in contract or in tort) exceed the amounts actually paid to Service Provider by Service Recipient pursuant to this Agreement.

10.2 Service Provider Indemnity. Service Provider hereby agrees to indemnify, defend and hold harmless Service Recipient and each of its Affiliates from and against any and all claims, losses, demands, liabilities, costs and expenses (including reasonable attorney’s fees and costs and expenses related thereto) suffered or incurred by Service Recipient or any of its Affiliates as a result of, or in connection with, any third party claims to the extent caused, in whole or in part, by the fraud, gross negligence or willful misconduct of Service Provider or any of its Affiliates in performing the Services. In no event shall the aggregate liability of Service Provider and its Affiliates to Service Recipient and its Affiliates, for any damages concerning Service Provider’s or its Subsidiaries’ or subcontractors’ performance or nonperformance of the Services or any other matter arising out of, or related to, this Agreement (regardless of whether any such claim for such damages is based in contract or in tort) exceed the amounts actually paid to Service Provider by Service Recipient pursuant to this Agreement.

10.3 Procedures. Any claim for indemnification under this Article 10 shall be governed by, and be subject to, the provisions of Article V of the Separation Agreement, which provisions are hereby incorporated by reference into this Agreement and any references to “Agreement” in such Article V as incorporated herein shall be deemed to be references to this Agreement.

## **Article 11**

### **Dispute Resolution**

Any controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity, termination or breach of this Agreement or otherwise arising out of, or in any way related to this Agreement or the transactions contemplated hereby, including any claim based on contract, tort, statute or constitution (but excluding any controversy, dispute or claim arising out of any Contract relating to the use or lease of real property if any third party is a necessary party to such controversy, dispute or claim) (collectively, “Agreement Dispute”), shall be governed by, and be subject to, the provisions of Article IX of the Separation Agreement, which provisions (and related defined terms) are hereby incorporated by reference into this Agreement.

## **Article 12**

### **Property Rights**

12.1 No Transfer. The Parties acknowledge and agree that nothing in this Agreement is intended to transfer any right, title, or interest in and to any tangible, intangible, real or personal property (including any and all intellectual property rights). Notwithstanding any materials, deliverables, or other products that may be created or developed by Service Provider or its Subsidiaries from the date hereof through the expiration or termination of the relevant

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Services Term, Service Provider does not hereby convey, nor does Service Recipient nor any of its Subsidiaries hereby obtain, any right, title, or interest in or to any of Service Provider’s or any of its Subsidiaries’ equipment, materials, deliverables, products, or any other rights or property used to provide the Services. All customer and personnel data, files and input and output materials and the media upon which they are located that are supplied by Service Recipient or any of its Subsidiaries in connection with this Agreement shall remain Service Recipient’s or such Subsidiary’s property, respectively, and Service Provider shall not have any rights or interests with respect thereto.

**Article 13**  
**Confidential Information**

Any Confidential Information received by either Party or its Affiliates from the other Party or any of its Affiliates in connection with this Agreement shall be governed by, and be subject to, the provisions of Article VII of the Separation Agreement, which provisions are hereby incorporated by reference into this Agreement and any references to “Agreement” in such Article VII as incorporated herein shall be deemed to be references to this Agreement.

**Article 14**  
**Miscellaneous**

14.1 Incorporation. The provisions of Article XII (Miscellaneous) (except for Section 12.8) of the Separation Agreement are incorporated herein, *mutatis mutandis*, by reference.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties caused this Transition Services Agreement to be duly executed as of the day and year first above written.

**PDL BioPharma, Inc.,**  
a Delaware corporation

By: /s/ John P. McLaughlin  
Name: John P. McLaughlin  
Title: President and Chief Executive Officer

**Facet Biotech Corporation,**  
a Delaware corporation

By: /s/ Faheem Hasnain  
Name: Faheem Hasnain  
Title: President and Chief Executive Officer

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## Tax Sharing and Indemnification Agreement

THIS TAX SHARING AND INDEMNIFICATION AGREEMENT (this “Agreement”) dated as of December 18, 2008 (the “Distribution Date”), is entered into by and between PDL BioPharma, Inc., a Delaware corporation (“PDL”), and Facet Biotech Corporation, a Delaware corporation (“Facet”) (each a “Party” and collectively, the “Parties”). Capitalized terms not defined herein shall have the meaning set forth in the Separation Agreement.

### Recitals

WHEREAS, PDL and Facet have entered into a Separation and Distribution Agreement, dated as of December 17, 2008, (the “Separation Agreement”), relating to the separation by PDL of the PDL Business and the Facet Business (as defined below) into PDL and Facet, respectively.

WHEREAS, prior to the separation, PDL will (i) transfer the Facet Assets (as defined below) and Facet Employees (as defined below) to Facet and Facet will assume the Facet Liabilities (as defined below) (the “Contribution”), and (ii) distribute on a pro rata basis all of the issued and outstanding shares of common stock of Facet to the holders of PDL common stock (the “Distribution”).

WHEREAS, in connection with the Contribution and the Distribution, the Parties wish to provide for the payment of Taxes (as defined below) and entitlement to refunds thereof, allocate responsibility and provide for cooperation in connection with the filing of returns in respect of Taxes, and provide for certain other matters relating to Taxes.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions, covenants and provisions of this Agreement, PDL and Facet mutually covenant and agree as follows:

### Article I

#### Definitions

- 1.1 “Code” means the U.S. Internal Revenue Code of 1986, as amended.
- 1.2 “Contribution” shall have the meaning the meaning set forth in the recitals hereto.
- 1.3 “Distribution Date” shall have the meaning set forth in Section 1.13 of the Separation Agreement.
- 1.4 “Distribution” shall have the meaning set forth in the recitals hereto.
- 1.5 “Facet” shall have the meaning set forth in the preamble hereto.

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- 1.6 “Facet Assets” shall have the meaning set forth in Section 1.22 of the Separation Agreement.
- 1.7 “Facet Business” shall have the meaning set forth in Section 1.24 of the Separation Agreement.
- 1.8 “Facet Employees” shall have the meaning set forth in Section 1.25 of the Separation Agreement.
- 1.9 “Facet Indemnitees” shall have the meaning set forth in Section 3.1 of this Agreement.
- 1.10 “Facet Liabilities” shall have the meaning set forth in Section 1.26 of the Separation Agreement.
- 1.11 “Facet U.S. Subsidiaries” shall mean Fremont Management, Inc. and Fremont Holdings, LLC. For clarity, Fremont Management, Inc. is a member of the PDL Consolidated Group prior to the Distribution.

1.12 “Final Determination” means any final determination of a liability in respect of Taxes that, under applicable Tax Law, is no longer subject to further appeal, review or modification through proceedings or otherwise (including the expiration of the statute of limitations or a period for the filing of claims for refunds, amended Tax Returns or appeals from adverse determinations).

- 1.13 “Indemnitee” means any Person entitled to indemnification pursuant to the provisions of this Agreement.
- 1.14 “Indemnifying Party” means any Party required to provide indemnification pursuant to the provisions of this Agreement.
- 1.15 “IRS” means the U.S. Internal Revenue Service or any successor thereto, including its agents, representatives, and attorneys.
- 1.16 “Law” shall have the meaning set forth in Section 1.41 of the Separation Agreement.
- 1.17 “Party” shall have the meaning set forth in the preamble hereto.
- 1.18 “PDL” shall have the meaning set forth in the preamble hereto.

1.19 “PDL Consolidated Group” means PDL and, with respect to the federal Taxes, the other members of the affiliated group of corporations (within the meaning of Section 1504(a) of the Code) of which PDL is the common parent, and with respect to state or local Taxes, any other corporations with which PDL filed or files a consolidated, combined or unitary Tax Return with PDL as the common parent.

2

- 1.20 “PDL Consolidated Return Period” means a taxable period that ends on or before, or includes, the Distribution Date for which a consolidated, combined or unitary (as applicable) federal, state or local Tax Return is filed or required to be filed by the PDL Consolidated Group.
- 1.21 “PDL France” shall have the meaning set forth in Section 2.1(a) of this Agreement.
- 1.22 “PDL Indemnitees” shall have the meaning set forth in Section 3.2 of this Agreement.
- 1.23 “PDL Returns” shall have the meaning set forth in Section 2.1(a) of this Agreement.
- 1.24 “PDL Tax Liability” means the consolidated, combined or unitary Tax Liability of the PDL Consolidated Group.
- 1.25 “Person” means any individual, partnership, joint venture, limited liability company, corporation, association, joint stock company, trust, unincorporated organization or similar entity or a governmental authority or any department or agency or other unit thereof.
- 1.26 “Post-Distribution Taxable Period” means a taxable period (and in the case of a Straddle Period, the portion of a taxable period) that, to the extent it relates to Facet and its Subsidiaries, begins after midnight on the Distribution Date.
- 1.27 “Pre-Distribution Taxable Period” means a taxable period (and in the case of a Straddle Period, the portion of a taxable period) ending on or before midnight on the Distribution Date.
- 1.28 “Proceeding” means any audit or other examination, judicial or administrative proceeding relating to liability for, or Refunds or adjustments with respect to, Taxes.
- 1.29 “Refund” means any refund of Taxes, including any reduction in Tax Liabilities by means of a credit, offset, use of an overpayment or otherwise.
- 1.30 “Straddle Period” means any taxable period that begins on or before and ends after the Distribution Date.
- 1.31 “Subsidiary” shall have the meaning set forth in Section 1.61 of the Separation Agreement.
- 1.32 “Tax” means any tax, charge, fee, impost, levy or other assessment imposed by any federal, state, local or foreign Taxing Authority, including income, gross receipts, excise, property, sales, use, license, capital stock, transfer, franchise, payroll, withholding, social security, value added and other taxes, and any interest, penalties or additions attributable thereto.

- 1.33 “Tax Item” means any item of income, gain, loss, deduction or credit or other attribute that may have the effect of increasing or decreasing any Tax.
- 1.34 “Tax Liability” means all liabilities for Taxes.
- 1.35 “Tax Return” means any return, report, certificate, filing, statement, questionnaire, declaration, form or similar statement or document (including any related or supporting information or schedule attached thereto and any information return, amended tax return, claim for refund or declaration of estimated tax) required to be supplied to, or filed with, a Taxing Authority or jurisdiction (foreign or domestic) in connection with the determination, assessment or collection of any Tax or the administration of any Laws, regulations or administrative requirements relating to any Tax.
- 1.36 “Taxing Authority” means any governmental authority or any subdivision, agency, commission or authority thereof or any quasi-governmental or private body, whether domestic or foreign, having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).
- 1.37 “Treasury Regulation” means the final and temporary (but not proposed) income tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

## Article II

### Preparation and Filing of Tax Returns; Payment of Tax

#### 2.1 Tax Returns of PDL.

(a) Except as provided herein, PDL shall have sole and exclusive responsibility for the preparation and filing, on a timely basis of all Tax Returns (the “PDL Returns”) for any taxable period that ends on or before the Distribution Date as are required to be filed of (i) PDL, which, for the avoidance of doubt, includes the Facet Business prior to the Distribution Date, (ii) each member of the PDL Consolidated Group and (iii) PDL BioPharma France S.A.S. (“PDL France”). PDL shall have the right to: determine the manner in which all such returns shall be filed; make any elections in connection with any such returns; contest, compromise and settle any adjustments of deficiency proposed, asserted or assessed in connection with any such returns; file, pursue, compromise or settle any claim for refund; and determine whether any refunds to which PDL is entitled shall be paid by way of a refund or credit.

(b) To the extent an election, return position, or amendment to a Tax Return filed by PDL or a member of the PDL Consolidated Group relates to an item of income, gain, loss or deduction of Facet, the Facet Business or PDL France accruing in a Post-Distribution Taxable Period, Facet and PDL shall cooperate with each other reasonably and in good faith to determine a mutually acceptable election, return position, or amendment to such Tax Return. Notwithstanding the foregoing, if such election, return position, or amendment to such Tax Return solely affects Facet, the Facet Business



or PDL France, such election, return position, or amendment to such Tax Return shall be determined by Facet in its sole discretion, reasonably and in good faith.

(c) Facet shall prepare and file all Tax Returns for all Straddle Periods (i) of PDL France and (ii) that include solely Facet or the Facet Business. PDL and Facet shall execute such consents, elections and other documents as may be required to provide for the proper filing of each Tax Return relating to a Straddle Period.

## 2.2 Tax Liability.

(a) PDL shall be liable for all Taxes due in respect of all PDL Returns and all Taxes imposed on or with respect to PDL or any of its Subsidiaries (including Facet, the Facet Business, the Facet U.S. Subsidiaries and PDL France) for all Pre-Distribution Taxable Periods.

(b) Facet shall be liable for all Taxes of Facet, PDL France, the Facet U.S. Subsidiaries or relating to the Facet Business due in respect of all Post-Distribution Taxable Periods.

(c) For purposes of this Section 2.2, any Tax Liability for a Straddle Period shall be apportioned between the portion of the taxable period ending on the Distribution Date and the portion of the taxable period beginning after the Distribution Date. Such apportionments shall be made on a per diem basis for (i) real and personal property Taxes and similar Taxes, including Taxes based on net-worth capital, intangibles or similar items, and (ii) exemptions, allowances or deductions that are calculated on an annual basis (such as the deduction for depreciation). Such apportionment shall be made for all other Taxes on the basis of a "closing of the books" as of the end of the day of the Distribution Date.

## Article III

### Indemnification for Taxes

3.1 Indemnification by PDL. Except as otherwise provided in this Article III, PDL shall indemnify and hold Facet, the Facet U.S. Subsidiaries and PDL France and their successors and assigns (collectively, the "Facet Indemnitees") harmless from and against (i) the PDL Tax Liability, including any Taxes that are imposed on PDL, any member of the PDL Consolidated Group, Facet or PDL France as a result (in whole or in part) of the Contribution or Distribution, (ii) any Tax Liability for Taxes as a result of Treasury Regulation Section 1.1502-6 or any analogous or similar provision under state or local Law or regulation, of any Person which is or has ever been a member of the PDL Consolidated Group, (iii) all Tax Liabilities that PDL is required to pay under Article II hereof and (iv) any costs and expenses related to any of the foregoing (including reasonable legal, accounting, appraisal, consulting or similar fees and expenses), provided, however, that this Section 3.1 shall not apply to any portion of the Tax Liability of Facet described in Section 3.2. For the avoidance of doubt, PDL shall not be required to indemnify or otherwise compensate Facet for any net operating losses, credits, refunds, deductions, depreciation, amortization, allowance or other tax items accrued by Facet or

the Facet Business in the Pre- Distribution Taxable Period whether or not such tax item is used to reduce or offset a Tax Liability of PDL.

3.2 Indemnification by Facet. Except as otherwise provided in this Article III, Facet shall indemnify and hold each member of the PDL Consolidated Group (other than Facet and the Facet U.S. Subsidiaries, if applicable) and their successors and assigns (collectively, the "PDL Indemnitees") harmless from and against (i) all Tax Liabilities that Facet is required to pay under Article II and (ii) any costs and expenses related to Tax Liabilities described in clause (i) (including reasonable legal, accounting, appraisal, consulting or similar fees and expenses).

3.3 Indemnification Payments. PDL and Facet agree that any indemnification payment made pursuant to this Article III or Article V of the Separation Agreement, shall be paid free and clear of any Tax deduction or withholding. If any deduction or withholding is required by applicable Law to be made from any indemnification payment made pursuant to this Article III or Article V of the Separation Agreement, the amount of the payment will be increased by such additional amount as is necessary to ensure that the net amount received by the Indemnitee (after taking account of all such deductions and withholdings) is equal to the amount which it would have received had the payment in question not been subject to any deductions or withholdings. Notwithstanding the foregoing, the Parties agree to use commercially reasonable efforts (to the extent such efforts will not result in materially adverse consequences to a Party) to mitigate or avoid such deductions and withholdings.

## Article IV

### Tax Contests

4.1 Notification. Facet shall promptly upon receipt of notice thereof notify PDL in writing of any communication with respect to any pending or threatened Proceeding in connection with a Tax Liability (or an issue related thereto) for which PDL may be responsible pursuant to this Agreement. Facet shall include with such notification (and thereafter provide to PDL) a true, correct and complete copy of any written communication, and an accurate and complete written summary of any oral communication, received by Facet with respect to any such Proceeding. The failure of Facet to timely forward such notification or further communication in accordance with the immediately preceding sentence shall not relieve PDL of its obligation to pay such Tax Liability or indemnify Facet therefor, except and to the extent that the failure to timely forward such notification or further communication actually prejudices the ability of PDL to contest such Tax Liability or increases the amount of such Tax Liability. Similarly, PDL shall promptly upon receipt of notice thereof notify Facet in writing of any communication with respect to any pending or threatened Proceeding in connection with a Tax Liability (or an issue related thereto) for which Facet may be responsible pursuant to this Agreement. PDL shall include with such notification (and thereafter provide to Facet) a true, correct and complete copy of any written communication, and an accurate and complete written summary of any oral communication, received by PDL

with respect to any such Proceeding. The failure of PDL to timely forward such notification or further communication in accordance with the immediately preceding sentence shall not relieve Facet of its obligation to pay such Tax Liability or indemnify PDL therefor, except and to the extent that the failure to timely forward such notification or further communication actually prejudices the ability of Facet to contest such Tax Liability or increases the amount of such Tax Liability.

4.2 Proceedings Involving PDL. Except as limited in Section 4.2(a), (b), and (c), PDL (or such member of the PDL Consolidated Group as PDL shall designate) shall be entitled to control, settle, contest and designate counsel with respect to any Proceeding with respect to a Tax Return filed by PDL or a member of the PDL Consolidated Group (which, for the avoidance of doubt, shall not include Facet or any Facet Subsidiary subsequent to the Distribution Date) or which Proceeding relates to items for which PDL is responsible hereunder, and PDL shall have the right to resolve any such Proceeding in its sole discretion.

(a) PDL shall allow Facet and its counsel to participate at its own expense in any Proceeding relating to a Tax Return filed for a PDL Consolidated Return Period, solely to the extent that such Proceeding relates to Tax for which Facet would be liable under Section 2.2.

(b) Facet shall be entitled to control, settle, contest and designate counsel with respect to any Proceeding with respect to a Tax Return that includes solely Facet, the Facet U.S. Subsidiaries or PDL France and relates solely to items for which Facet is responsible hereunder, and Facet shall have the right to resolve any such Proceedings in its sole discretion.

(c) Facet shall allow PDL and its counsel to participate at its own expense in any Proceeding relating to a Tax Return filed by Facet, to the extent that such Proceeding relates to Tax for which PDL would be liable under this Agreement.

## Article V

### Refunds and Tax Sharing Agreements

5.1 Refunds. Except as set forth in this Section 5.1, PDL shall be entitled to all Refunds (and any interest thereon received from the applicable Taxing Authority) in respect of Taxes for all PDL Returns or Taxes which relate to items for which PDL is responsible hereunder. Facet shall be entitled to all Refunds (and any interest thereon received from the applicable Taxing Authority) in respect of Taxes paid by Facet, the Facet U.S. Subsidiaries and PDL France for all Post-Distribution Taxable Periods. A party receiving a Refund to which another party is entitled, in whole or in part, pursuant to this Section 5.1 shall pay the amount to which such other party is entitled within ten (10) days after such Refund is received or used, as the case may be. PDL shall be permitted to file, and Facet shall fully cooperate with PDL in connection with, any claim for Refund in respect of a Tax for which PDL is responsible hereunder.

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5.2 Tax Sharing Agreements. Any tax sharing agreement (other than this Agreement) that includes any member of the PDL Consolidated Group, on the one hand, and Facet on the other hand shall be terminated as of the Distribution Date and will have no further effect for any taxable year (whether the current year, a future year, or a past year).

5.3 Compensation Deductions. PDL (or the appropriate member of the PDL Consolidated Group) shall claim all Tax deductions arising by reason of the exercise of options on, or receipt or vesting of restricted shares of, PDL stock.

## Article VI

### Cooperation and Exchange of Information

#### 6.1 Cooperation and Exchange of Information.

(a) Facet, on behalf of itself and each of its affiliates, agrees to provide PDL (or its designee), at PDL's expense, with such cooperation or information as PDL (or its designee) reasonably shall request in connection with the determination of any other calculations described in this Agreement, the preparation or filing of any Tax Return or claim for Refund, or the conduct of any Proceeding. Such cooperation and information shall include (i) promptly forwarding copies of appropriate notices and forms or other communications (including information document requests, revenue agent reports and similar reports, notices of proposed adjustments and notices of deficiency) received from or sent to any Taxing Authority or any other administrative, judicial or governmental authority, (ii) upon reasonable notice, providing copies of all relevant Tax Returns, together with accompanying schedules and related workpapers, documents relating to rulings or other determinations by taxing authorities, and such other records concerning the ownership and tax basis of property, or other relevant information that Facet or its affiliates may possess, (iii) upon reasonable notice, providing of such additional information and explanations of documents and information provided under this Agreement (including statements, certificates and schedules delivered by either Party) as shall be reasonably requested by PDL (or its designee), (iv) upon reasonable notice, the providing of any document that may be necessary or reasonably helpful in connection with the filing of a Tax Return, a claim for a Refund, or in connection with any Proceeding, including such waivers, consents or powers of attorney as may be necessary for PDL to exercise its rights under this Agreement, and (v) upon reasonable notice, using reasonable efforts to obtain any documentation from a governmental authority or a third party that may be necessary or reasonably helpful in connection with any of the foregoing. Upon reasonable notice, Facet shall make its, or shall cause its affiliates to make their, employees and facilities available on a mutually convenient basis to provide explanation of any documents or information provided hereunder. Any information obtained under this Section 6.1(a) shall be kept confidential, except as otherwise reasonably may be necessary in connection with the filing of Tax Returns or claims for Refund or in conducting any Proceeding.

8

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(b) PDL, on behalf of itself and each member of the PDL Consolidated Group (including Facet), agrees to provide Facet (or its designee) with such cooperation or information as Facet (or its designee), at Facet's expense, reasonably shall request in connection with the determination of

any other calculations described in this Agreement, the preparation or filing of any Tax Return or claim for Refund, or the conduct of any Proceeding. Such cooperation and information shall include and upon reasonable notice, promptly forwarding copies of appropriate notices and forms or other communications (including information document requests, revenue agent's reports and similar reports, notices of proposed adjustments and notices of deficiency) received from or sent to any Taxing Authority or any other administrative, judicial or governmental authority, (ii) upon reasonable notice, providing copies of all relevant Tax Returns, together with accompanying schedules and related workpapers, documents relating to rulings or other determinations by taxing authorities, and such other records concerning the ownership and tax basis of property, or other relevant information that PDL or any member of the PDL Consolidated Group may possess, (iii) upon reasonable notice, the provision of such additional information and explanations of documents and information provided under this Agreement (including statements, certificates and schedules delivered by either Party) as shall be reasonably requested by Facet (or its designee), (iv) upon reasonable notice, the providing of any document that may be necessary or reasonably helpful in connection with the filing of a Tax Return, a claim for a Refund, or in connection with any Proceeding, including such waivers, consents or powers of attorney as may be necessary for Facet to exercise its rights under this Agreement, and (v) the use of PDL's reasonable efforts to obtain any documentation from a governmental authority or a third party that may be necessary or reasonably helpful in connection with any of the foregoing. Upon reasonable notice, PDL shall make, or shall cause each member of the PDL Consolidated Group to make, its employees and facilities available on a mutually convenient basis to provide explanation of any documents or information provided hereunder. Any information obtained under this Section 6.1(b) shall be kept confidential, except as otherwise reasonably may be necessary in connection with the filing of Tax Returns or claims for Refund or in conducting any Proceeding.

6.2 Retention of Records. Facet and PDL agree to retain all Tax Returns, related schedules and workpapers, and all material records and other documents as required under Code Section 6001 and the Treasury Regulations promulgated thereunder (and any similar provision of state, local, or foreign Tax Law) existing on the Distribution Date or created in respect of (i) any taxable period that ends on or before or includes the Distribution Date or (ii) any taxable period that may be subject to a claim hereunder, in each case until the later of (x) the expiration of the statute of limitations (including extensions) for the taxable periods to which such Tax Returns and other documents relate and (y) the Final Determination of any payments that may be required in respect of such taxable periods under this Agreement. From and after the end of the period described in the preceding sentence of this Section 6.2, if Facet wishes to dispose of any such records and documents, then Facet shall provide written notice thereof to PDL and shall provide PDL the opportunity to take possession of any such records and documents within ninety (90) days after such notice is delivered; provided, however, that if PDL does not, within such ninety (90) day period, confirm its intention to take possession of such records and documents,

Facet may destroy or otherwise dispose of such records and documents. From and after the end of the period described above in this Section 6.2, if PDL wishes to dispose of any such records and documents, then PDL shall provide written notice thereof to Facet and shall provide Facet the opportunity to take possession of any such records and documents within ninety (90) days after such notice is delivered; provided, however, that if Facet does not, within such ninety (90) day period, confirm its intention to take possession of such records and documents, PDL may destroy or otherwise dispose of such records and documents.

## Article VII

### Payments

7.1 Method of Payment. All payments required by this Agreement shall be made by (a) wire transfer to the appropriate bank account as may from time to time be designated by the Parties for such purpose; provided that, on the date of such wire transfer, notice of the transfer is given to the recipient thereof in accordance with Section 8.4, or (b) any other method agreed to by the Parties. All payments due under this Agreement shall be deemed to be paid when available funds are actually received by the payee.

7.2 Interest. Any payment required by this Agreement that is not made on or before the date required hereunder shall bear interest, from and after such date through the date of payment, at the underpayment rate as in effect at such time under Section 6621 of the Code.

7.3 Characterization of Payments. For all tax purposes, the Parties agree to treat, and to cause their respective affiliates to treat, (i) any payment required by this Agreement as a contribution by PDL to Facet or distribution from Facet to PDL, as the case may be, occurring immediately prior to the Distribution and (ii) any payment of interest or non-federal Taxes by or to a Taxing Authority, as taxable to or deductible by, as the case may be, the party entitled under this Agreement to receive such payment or required under this Agreement to make such payment, in either case except as otherwise mandated by applicable Law. In the event it is determined as a result of a Final Determination that any treatment described under clause (i) or (ii) hereof is not permissible, the payment in question shall be adjusted to place the Parties in the same after-tax position they would have enjoyed absent such Final Determination.

7.4 Time of Indemnification Payment. To the extent an indemnification obligation arises, the Indemnatee shall, upon at least ten (10) days' prior notice, make payment pursuant to such indemnification obligation no later than five (5) days prior to the date the Indemnatee makes a payment of Taxes, interest, or penalties with respect to such Tax Liability, including a proposed adjustment of Taxes or an assessment of Tax deficiency asserted or made by any Taxing Authority that is premised in whole or part on such Tax Liability, or a payment made in settlement of an asserted Tax deficiency.

## Article VIII

### Miscellaneous Provisions

8.1 Governing Law; Jurisdiction. This Agreement shall be deemed to have been made in the State of Delaware and its form, execution, validity, construction and effect shall be determined in accordance with the Laws of the State of Delaware, without giving effect to the principles of conflicts of Law thereof.

8.2 Assignability. The provisions of this Agreement and the obligations and rights hereunder shall be binding upon, inure to the benefit of and be enforceable by (and against) the Parties and their respective successors and permitted transferees and assigns. Notwithstanding the foregoing, this Agreement shall not be assignable, in whole or in part, by any Party without the prior written consent of the other Party, and any attempt to assign any rights

or obligations arising under this Agreement without such consent shall be null and void; provided, that (i) a Party may assign this Agreement in connection with a merger transaction in which such Party is not the surviving entity or the sale by such Party of all or substantially all of its assets, and upon the effectiveness of such assignment the assigning Party shall be released from all of its obligations under this Agreement if the surviving entity of such merger or the transferee of such assets shall agree in writing, in form and substance reasonably satisfactory to the other Party, to be bound by all terms of this Agreement as if named as a “Party” hereto.

8.3 Third Party Beneficiaries. Except for the indemnification rights under this Agreement of any PDL Indemnitee or Facet Indemnitee in their respective capacities as such, (i) the provisions of this Agreement are solely for the benefit of the Parties and are not intended to confer upon any Person except the Parties any rights or remedies hereunder, and (ii) there are no third party beneficiaries of this Agreement and this Agreement shall not provide any third party with any remedy, claim, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement.

8.4 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the Party to be notified, (ii) when sent by confirmed facsimile, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective Parties at the addresses set forth below (or at such other addresses as shall be specified by notice given in accordance with this Section):

If to PDL, to:	PDL BioPharma, Inc. Attention: General Counsel 932 Southwood Boulevard Incline Village, NV 89451 Facsimile: 775-832-8501
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11

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with a copy to: (not to constitute notice)	Shearman & Sterling LLP Attention: Peter Lyons 599 Lexington Avenue New York, NY 10022 Facsimile: 212-848-7179
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If to Facet, to:	Facet Biotech Corporation Attention: General Counsel 1400 Seaport Boulevard Redwood City, CA 94063 Facsimile: 650-454-1468
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with a copy to: (not to constitute notice)	DLA Piper LLP (US) Attention: Howard Clowes 153 Townsend Street, Suite 800 San Francisco, CA 94107-1957 Facsimile: 415- 659-7410
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8.5 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby or thereby, as the case may be, is not affected in any manner adverse to any Party. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to affect the original intent of the Parties.

8.6 Waivers of Default. The failure of either Party to require strict performance by the other Party of any provision in this Agreement will not waive or diminish such Party’s right to demand strict performance thereafter of that or any other provision hereof.

8.7 Amendments. This Agreement may not be modified or amended except by an agreement in writing signed by each of the Parties.

8.8 Construction.

(a) This Agreement has been prepared jointly and shall not be strictly construed against either Party.

(b) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine

12

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and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(c) Except as otherwise indicated, all references in this Agreement to “Articles” and “Sections” are intended to refer to Articles, Sections, Exhibits and Attachments to this Agreement.

(d) The words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

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

8.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. Any executed counterpart delivered by facsimile or other means of electronic transmission shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the Parties have caused this Tax Sharing and Indemnification Agreement to be executed by their duly authorized representatives as of the day and year first above written.

**PDL BioPharma, Inc.,**  
a Delaware corporation

By: /s/ John P. McLaughlin  
Name: John P. McLaughlin  
Title: President and Chief Executive Officer

**Facet Biotech Corporation,**  
a Delaware corporation

By: /s/ Faheem Hasnain  
Name: Faheem Hasnain  
Title: President and Chief Executive Officer

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# Unaudited Pro Forma Financial Information

## BASIS OF PRESENTATION

The following Unaudited Pro Forma Condensed Consolidated Statements of Operations for the nine months ended September 30, 2008 and the year ended December 31, 2007 have been derived from PDL Biopharma, Inc.'s ("PDL") historical financial statements and have been prepared as if the spin-off of Facet Biotech Corporation ("Facet Biotech") occurred as of January 1, 2007. The Unaudited Pro Forma Condensed Consolidated Balance Sheet as of September 30, 2008 is derived from PDL's historical financial statements and has been prepared as if the spin-off occurred on September 30, 2008.

In order to derive pro forma financial information, the historical results of PDL are adjusted to eliminate the assets, liabilities and results of operations of Facet Biotech. Pro forma adjustments are described in the Notes To Unaudited Pro Forma Condensed Consolidated Financial Statements. The pro forma adjustments are based on the best information available and assumptions that management believes are reasonable given the information available and in management's opinion, the pro forma adjustments are not expected to materially differ from the final adjustments.

PDL's unaudited pro forma financial statements are presented for illustrative and informational purposes only and are not intended to represent or be indicative of the financial condition or results of operations which would actually have been recorded if the Facet Biotech spin-off had occurred as of September 30, 2008 or during the periods presented. In addition, these unaudited pro forma financial statements do not include adjustments to reflect any other changes in PDL's business that have occurred during the periods presented, as previously disclosed in PDL's prior SEC filings and as also briefly discussed in Item 8.01 of this Form 8-K, and are not intended to represent PDL's financial position or results of operations for any future date or period. These historical unaudited pro forma financial statements should be read in conjunction with PDL's Annual Report on Form 10-K for the year ended December 31, 2007, Quarterly Reports on Form 10-Q for the periods ended March 31, 2008, June 30, 2008 and September 30, 2008 and Item 8.01 of this Form 8-K.

Due to the spin-off of Facet Biotech, when PDL issues financial statements for the year ending December 31, 2008, the historical results of Facet Biotech up to the date of the spin-off, along with some potential adjustments to remove general corporate overhead expenses, will be reflected as discontinued operations in accordance with the Statement of Financial Accounting Standards No. 144 (SFAS No. 144), *Accounting for the Impairment or Disposal of Long-Lived Assets*.

### PDL BioPharma, Inc. Unaudited Pro Forma Condensed Consolidated Balance Sheet September 30, 2008 (in thousands)

	PDL Historical	Spin-off of Facet Biotech (a)	Pro Forma Adjustments	PDL Pro Forma
<b>Assets</b>				
Current assets:				
Cash and cash equivalents	\$ 555,311	\$ —	\$ (409,197) (b)	\$ 146,114
Prepaid and other current assets	16,359	(14,511)	1,311 (c)	3,159
Current deferred tax assets	—	—	26,236 (d)	26,236
Total current assets	571,670	(14,511)	(381,650)	175,509
Long-term restricted cash	3,269	(3,269)	—	—
Land, property and equipment, net	127,269	(124,596)	—	2,673
Other intangible assets, net	7,821	(7,821)	—	—
Deferred tax asset	—	—	7,262 (d)	7,262
Other assets	8,214	(2,211)	—	6,003
Total assets	\$ 718,243	\$ (152,408)	\$ (374,388)	\$ 191,447
<b>Liabilities and Stockholders' Equity</b>				
Current liabilities:				
Accounts payable	\$ 3,478	\$ (2,841)	\$ 2,841 (e)	\$ 3,478
Accrued compensation	17,405	(16,946)	14,539 (e)	14,998
Other accrued liabilities	34,656	(16,235)	11,176 (e)	29,597
Deferred revenue	12,156	(12,156)	—	—
Current portion of other long-term debt	819	(819)	—	—
Total current liabilities	68,514	(48,997)	28,556	48,073
Convertible notes	499,998	—	—	499,998
Long-term deferred revenue	50,412	(48,912)	—	1,500
Other long-term liabilities	32,946	(32,865)	—	81
Total liabilities	651,870	(130,774)	28,556	549,652
Commitments and contingencies	—	—	—	—
Stockholders' equity	66,373	(21,634)	(402,944) (f)	(358,205)
Total liabilities and stockholders' equity	\$ 718,243	\$ (152,408)	\$ (374,388)	\$ 191,447

### PDL BioPharma, Inc. Unaudited Pro Forma Condensed Consolidated Statement of Operations Nine Months Ended September 30, 2008 (in thousands, except per share data)

	PDL Historical	Spin-off of Facet Biotech (a)	Pro Forma Adjustments	PDL Pro Forma
<b>Revenues:</b>				
Royalties	\$ 223,336	\$ —	\$ —	\$ 223,336
License, collaboration and other	23,232	(20,957)	—	2,275
Total revenues	246,568	(20,957)	—	225,611
<b>Costs and expenses:</b>				
Research and development	132,799	(132,799)	—	—
General and administrative	55,570	(35,078)	—	20,492
Restructuring charges	9,616	(9,441)	—	175
Asset impairment charges	3,784	(3,784)	—	—
Gain on sale of assets	(49,671)	49,671	—	—
Total costs and expenses	152,098	(131,431)	—	20,667
Operating income (loss)	94,470	110,474	—	204,944
Interest and other income, net	12,553	(13)	—	12,540
Interest expense	(11,958)	1,293	—	(10,665)
Income (loss) from continuing operations before income taxes	95,065	111,754	—	206,819
Income tax expense	4,979	(76)	64,425 (g)	69,328
Income (loss) from continuing operations	\$ 90,086	\$ 111,830	\$ (64,425)	\$ 137,491
<b>Income from continuing operations per basic share</b>	<b>\$ 0.76</b>			<b>\$ 1.16 (h)</b>
<b>Income from continuing operations per diluted share</b>	<b>\$ 0.64</b>			<b>\$ 0.94 (h)</b>
<b>Shares used to compute income (loss) per basic and diluted share:</b>				
Shares used to compute basic income (loss) per share	118,540		—	118,540 (h)
Shares used to compute diluted income (loss) per share	152,302		—	152,302 (h)

**PDL BioPharma, Inc.**  
**Unaudited Pro Forma Condensed Consolidated Statement of Operations**  
**Year Ended December 31, 2007**  
**(in thousands, except per share data)**

	PDL Historical	Spin-off of Facet Biotech (a)	Pro Forma Adjustments	PDL Pro Forma
<b>Revenues:</b>				
Royalties	\$ 221,088	\$ —	\$ —	\$ 221,088
License, collaboration and other	37,837	(34,011)	—	3,826
Total revenues	258,925	(34,011)	—	224,914
<b>Costs and expenses:</b>				
Research and development	204,175	(202,449)	—	1,726
General and administrative	67,367	(45,045)	—	22,322
Restructuring charges	6,668	(6,668)	—	—
Asset impairment charges	5,513	(5,513)	—	—
Total costs and expenses	283,723	(259,675)	—	24,048
Operating income (loss)	(24,798)	225,664	—	200,866
Interest and other income, net	19,362	871	—	20,233
Interest expense	(13,708)	639	—	(13,069)
Income (loss) from continuing operations before income taxes	(19,144)	227,174	—	208,030
Income tax expense	247	(123)	69,689 (g)	69,813
Income (loss) from continuing operations	\$ (19,391)	\$ 227,297	\$ (69,689)	\$ 138,217
<b>Income from continuing operations per basic share</b>	<b>\$ (0.17)</b>			<b>\$ 1.19 (h)</b>
<b>Income from continuing operations per diluted share</b>	<b>\$ (0.17)</b>			<b>\$ 1.03 (h)</b>
<b>Shares used to compute income (loss) per basic and diluted share:</b>				
Shares used to compute basic income (loss) per share	116,365		—	116,365 (h)
Shares used to compute diluted income (loss) per share	116,365		25,116	141,481 (h)

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- (a) These amounts reflect the elimination of the financial results of operations, assets, liabilities and accumulated other comprehensive income amounts associated with Facet Biotech due to the Spin-Off of Facet Biotech.
- (b) This pro forma adjustment represents a capital contribution to Facet Biotech by PDL of \$405 million that occurred in connection with the Spin-Off. Such amount is reduced by the \$3.3 million of restricted cash on Facet Biotech's balance sheet, plus the amount of accrued compensation and other accrued liabilities that Facet Biotech will record on its balance sheet in connection with the Spin-Off. Under the Separation and Distribution Agreement, PDL is obligated to fund all short-term liabilities, with the exception of deferred revenue and the short-term portion of long-term debt, that were incurred by Facet Biotech through the Spin-Off date. For ease of administration and in connection with the assignment of certain rights and obligations under the Separation and Distribution Agreement, certain of the current liabilities were transferred to Facet Biotech on the Spin-Off date to be paid by Facet Biotech. As such, within 25 business days of the Spin-Off date, PDL will provide additional funding to Facet Biotech to reimburse it for these liabilities that were incurred before the Spin-Off and transferred to Facet Biotech on the Spin-Off date (such amount was \$7.5 million as of September 30, 2008).
- (c) In connection with the Spin-Off, certain assets that were allocated to Facet's historical financial statements are not transferable to Facet, for example, prepaid insurance. As such, on the spin off date Facet would not record these assets on its books. The amount of such assets was \$1.3 million as of September 30, 2008.
- (d) This pro forma adjustment reflects the expected reduction on the Spin-Off date to PDL's valuation allowance for its deferred tax assets totaling \$33.5 million. This adjustment is the result of PDL's expectations that, following the Spin-Off, it will be profitable and, therefore, will be able to utilize such assets in future periods. Of the total \$33.5 million reduction to the valuation allowance, \$26.2 million relates to the current deferred tax asset and \$7.3 million relates to the long-term deferred tax asset.
- (e) Under the Separation and Distribution Agreement, PDL is obligated to fund all short-term liabilities, with the exception of deferred revenue and the short-term portion of long-term debt, that were incurred by Facet Biotech through the Spin-Off date. These pro forma adjustments reflect the payment of certain liabilities by PDL that had been allocated to the Facet biotechnology business in the historical financial statements.
- (f) This pro forma adjustment represents the value of the net assets contributed to Facet Biotech as well as a \$33.5 million reduction to PDL's valuation allowance for its deferred tax assets upon the Spin-Off.
- (g) This pro forma adjustment adjusts PDL's total income tax expense to the estimated 40% statutory tax, which includes both federal and state taxes, as the valuation allowance on the deferred tax assets would have been removed upon the Spin-Off. Such amount is partially offset by the tax benefit related to the release of the valuation allowance on our deferred tax assets (see Note (d) above). Since we expect that the tax basis of the Facet Biotech net assets will be higher than the fair value of such assets as of the Spin-Off date, we expect to recognize a tax loss in connection with the Spin-Off of Facet Biotech.
- (h) The pro forma net loss per basic and diluted share have been calculated based on PDL's pro forma income from continuing operations. The number of shares used to calculate pro forma income from continuing operations per basic and diluted share have been determined by using PDL's historical weighted-average shares for the nine months ended September 30, 2008 and the year ended December 31, 2007.
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