

TRADEMARK ASSIGNMENT

Electronic Version v1.1
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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Schwarz Pharma, Inc.		07/19/2005	CORPORATION: DELAWARE
Hollister-Stier Laboratoreis, LLC		07/25/2005	LIMITED LIABILITY COMPANY:
RECEIVING PARTY DATA			
Name:	AllerQuest LLC		
Street Address:	836 Farmington Avenue		
City:	West Hartford		
State/Country:	CONNECTICUT		
Postal Code:	06119-1551		
Entity Type:	LIMITED LIABILITY COMPANY:		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	1590467	PRE-PEN	
CORRESPONDENCE DATA			
Fax Number:	(212)909-3078		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	2129093078		
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Correspondent Name:	Susan Zablocki; Kirkland & Ellis LLP		
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ATTORNEY DOCKET NUMBER:	41975-4		
NAME OF SUBMITTER:	Susan Zablocki		
Signature:	//susan zablocki//		

CH \$40.00 1590467

Date:

08/08/2008

Total Attachments: 40

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TERMINATION AND TRANSFER AGREEMENT

This Termination and Transfer Agreement (this "Agreement") dated and effective as of July 19, 2005 (the "Effective Date"), is entered into by and among SCHWARZ PHARMA, Inc. ("Schwarz"), Hollister-Stier Laboratories, LLC ("H-S") and AllerQuest LLC ("AllerQuest"). Schwarz, H-S, and AllerQuest are individually referred to herein as a "Party", and collectively referred to herein as the "Parties".

RECITALS

A. Schwarz and Bayer Corporation ("Bayer") entered into that certain Agreement dated November 18, 1996, as amended and currently in effect, a copy of which is attached as Exhibit A (the "Existing Agreement"). Bayer's interest in the Existing Agreement was transferred to H-S in 1999.

B. Despite diligent efforts and incurring substantial expense, H-S has been unable to locate a supplier for the Pre-Pen Product described in the Existing Agreement.

C. Because of its inability to locate a supplier, H-S has discontinued marketing the Pre-Pen Product, and suspended efforts to obtain FDA approval for the MDM Product described in the Existing Agreement.

D. AllerQuest believes it has the resources necessary to complete the regulatory approval process for the Pre-Pen Product and MDM Product (collectively, the "Products"), and to locate a supplier and manufacturer for the Products.

E. Accordingly, Schwarz and H-S desire to terminate the Existing Agreement, and to assign all of their respective rights to certain assets relating to the Products to AllerQuest.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Termination of Existing Agreement and Release of Claims**

Schwarz and H-S hereby terminate all of their respective rights and obligations under the Existing Agreement, thereby terminating the Existing Agreement, and Schwarz and H-S each release the other from any and all claims arising under the Existing Agreement.

2. Transfer of Certain Rights

In consideration of the payment of ten dollars (U.S. \$10.00), to each of Schwarz and H-S, and other valuable consideration by AllerQuest, receipt and sufficiency of which is acknowledged, Schwarz and H-S hereby convey, transfer and quit claim to AllerQuest, to the extent of Schwarz's and H-S' respective interest therein, if any, and without any representation or warranty whatsoever, except for the final sentence of this Section 2, all of their respective right, title and interest in and to the following assets (collectively, the "Assets"):

- (a) All intellectual property rights in and to the Products owned by Schwarz or H-S, including, but not limited to, all United States and foreign trademark registrations and applications for registration for the Products, together with the goodwill of the business associated therewith.
- (b) All U.S. and foreign regulatory filings and/or regulatory approvals in the name of Schwarz and/or H-S for the Products, including, but not limited to,
 - (i) New Drug Application on file with the FDA under No. 50-114, PRE-PEN® (benzylpenicilloyl polylysine injection USP);
 - (ii) Biologics License on file with the FDA under No. 153 PRE-PEN®;
 - (iii) Investigational New Drug Application, BB-IND 4262 -- Minor Penicillin Determinant Mixture Skin Test;
 - (iv) Orphan Drug Application on file with the FDA under No. 87-187 PRE-PEN®/MDM;
 - (v) Canadian New Drug Submission (DIN#00328693); and
 - (vi) Canadian New Drug Submission (NDS#HN7234).
- (c) The following equipment used in the manufacture of the Products, owned by Schwarz or H-S:
 - (i) Freeze dryer (Lyophilizer) warehoused in New Jersey; and
 - (ii) Diltration unit.
- (d) All residual raw materials in the possession of H-S and used in the manufacture of the Products, including, but not limited to, Poly-L-Lysine.

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- (e) All necessary manufacturing documentation, including, but not limited to, raw material specifications, quality control procedures, packaging specifications, manufacturing procedures, including recommendations for improvements in the manufacture of the Pre-Pen Product, and approved raw material suppliers, to the extent any of the foregoing exists and is in the possession of Schwarz or H-S.
- (f) All customer lists for the Pre-Pen Product, covering the last four (4) years, in the possession of H-S.
- (g) All clinical data, regulatory files and copies of regulatory filings, to the extent any of the foregoing exists and is in the possession of Schwarz or H-S.

Schwarz and H-S each represent and warrant to AllerQuest that neither has knowingly transferred to a third party any rights in or to the Assets or Products, and, except as set forth on Exhibit B, neither is party to any agreement with a third party relating to the Assets or Products that AllerQuest is acquiring hereunder.

3. Further Assurances

At AllerQuest's request and expense, Schwarz and H-S agree to execute any documents or provide copies of any documents in their possession, not previously provided under Section 2 above, reasonably necessary to carry out the purposes of this Agreement.

4. AS-IS, WHERE IS

Except for those representations and warranties in Section 2 above, the Parties acknowledge and agree that neither Schwarz nor H-S makes any representation or warranty whatsoever, whether express or implied, whether of merchantability, suitability or fitness for a particular purpose, regarding the Assets or Products, or any portion thereof, or the right, title or interest of Schwarz or H-S therein, or as to the title to or quality of the Assets or Products, or any part thereof, or as to the condition thereof, or the absence of any defects therein, whether latent or patent, or that the development, manufacture, use or sale of any Product, or any product utilizing any Asset, will not infringe any patent or other rights of any third party, it being understood that the Assets are conveyed to AllerQuest in "AS IS" and "WHERE IS" condition, with all faults. The Parties further acknowledge and agree that the "AS IS" and "WHERE IS" nature of this Agreement, and the allocation of risk that it implements, are essential elements of the bargain agreed to by the Parties, without which the Parties would not have entered into this Agreement.

5. Further Assistance by H-S.

H-S agrees to provide AllerQuest the technical assistance from one (1) or more of its employees or agents for a period of forty (40) hours to assist AllerQuest in the manufacture of the Products. H-S will consider in good faith providing additional technical assistance to AllerQuest at H-S' normal billing rates.

6. Commercialization

Without granting AllerQuest any rights in addition to those rights set forth in Sections 2 and 5 above, the Parties acknowledge and agree that, as of the Effective Date, AllerQuest and its affiliates, partners, co-developers, assignees or licensees shall have the sole responsibility for any and all development, manufacturing, commercialization, marketing, promotion, conducting of clinical trials, sale, use or other activity regarding the Assets or Products, or any portion thereof, or any compound or product related thereto, and the exercise of any and all rights conveyed to AllerQuest hereunder. AllerQuest, its affiliates, assignees, licensees and all third parties acting for or on behalf of AllerQuest shall comply with all applicable laws, rules, regulations and other legal requirements in conducting all such activities. The Parties further acknowledge and agree that, as of the Effective Date, neither Schwarz nor H-S, nor any of their respective affiliates shall have any ownership interest or rights in and to the Assets or Products, or, subject to H-S' obligations under Section 5 above, any involvement or role in, or responsibility for, the development, manufacturing, commercialization, marketing, promotion, conducting of clinical trials, sale, use or any other activity whatsoever regarding the Assets or Products, or any compound or product related thereto, or the exercise of any rights conveyed to AllerQuest hereunder.

7. Use of Names

AllerQuest acknowledges and agrees that AllerQuest, its affiliates, partners, co-developers, assignees and licensees shall not directly or indirectly use the name of Schwarz or H-S or any derivation of either, or the name of any affiliate of either or any derivation thereof, or any trademark owned or licensed by Schwarz or H-S or any of their respective affiliates, in the development, manufacturing, commercialization, marketing, labeling, publicity, promotion, conducting of clinical trials, sale, use or any other activity regarding the Products or Assets, or any compound or product related to either. For the avoidance of doubt, the previous sentence of this Section will have no effect on AllerQuest's ownership of and right to use the trademarks assigned by Schwarz and H-S to AllerQuest pursuant to Section 2(a) above. AllerQuest acknowledges and agrees that Schwarz and H-S have not played and will not play any role, and have no responsibility regarding AllerQuest's activities (or the activities of AllerQuest's affiliates, partners, co-developers, assignees or licensees) relating to the Products or Assets, or any compound or product related to either. AllerQuest, its affiliates, partners, co-developers, assignees and licensees shall make no oral or written statements of any nature whatsoever indicating any involvement on the part of Schwarz or H-S, or any affiliate of either, regarding AllerQuest's activities (or the activities of AllerQuest's

affiliates, partners, co-developers, assignees or licensees) involving the Products or Assets or otherwise, or any written statements related to this Agreement or the subject matter hereof.

8. Limitation of Liability

Except with regard to a third party claim subject to Section 9 below, no Party shall be liable to another Party for any consequential, indirect or other special damages suffered by a Party or its affiliates or any others resulting from or arising out of this Agreement or any transactions or activities contemplated hereunder. Notwithstanding any other provision of this Agreement, neither Schwarz nor H-S, nor any of their respective affiliates or any predecessor entity of either shall, under any circumstances, be required to reimburse, compensate or otherwise pay AllerQuest or any AllerQuest affiliate or any other party in connection with this Agreement (except for any direct damages for breach hereof), the Products, the Assets, or any product or compound related to any Product or Asset, or any related transaction or matter. The limitations applied by this Section 8 shall apply to any and all actions or claims against a Party, its affiliates, or any predecessor entity to any Party, whether based in contract, tort, strict liability, statutory liability or any other form or theory of liability whatsoever.

9. Indemnification

AllerQuest hereby agrees to indemnify, defend and hold harmless Schwarz and H-S, and their respective affiliates, and the respective directors, officers, employees and agents of any of the foregoing (each, an "Indemnitee") from and against any and all losses, costs, expenses (including reasonable attorneys' fees), damages or other liability ("Claims") resulting from: (a) the development, manufacture, commercialization, marketing, promotion, conducting of clinical trials, sale or use of products or services relating to the Products or Assets, or any compound or product obtained, developed, created, synthesized, designed, resulting from or based thereupon by AllerQuest, its affiliates, partners, co-developers, assignees or licensees, including, but not limited to, any actual or alleged injury, damage, death or other consequence occurring to any legal or natural person or property, as a result, directly or indirectly, of the possession, application, use or consumption of any such products or services; (b) the exercise by AllerQuest, its affiliates, partners, co-developers, assignees or licensees of the rights granted hereunder; or (c) any other action or inaction of AllerQuest, its affiliates, partners, co-developers, assignees or licensees with respect to the Products or Assets, or any portion thereof, or any rights assigned to AllerQuest hereunder.

10. Entire Agreement; Severability

This Agreement embodies the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all prior written or oral communications or agreements among any of them, all of which are merged in this Agreement. There are no restrictions, promises, warranties, covenants or undertakings relating to the subject matter of this Agreement, other than those expressly set forth or referred to in this Agreement. Any term or provision of this Agreement that is held to be invalid or unenforceable in any

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situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

11. Governing Law; Disputes

This Agreement and the rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any dispute, controversy or claim arising out of or in connection with this Agreement shall be determined and settled by binding arbitration in New York, New York, pursuant to the Rules of Arbitration then in effect of the American Arbitration Association. Any award rendered shall be final and conclusive upon the Parties and a judgment thereon may be entered in a court of competent jurisdiction. Each Party shall bear its own costs and expenses (including attorneys' fees) incurred in any dispute.

12. Counterparts; Fax Signatures

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures of the Parties transmitted by fax shall be deemed to be original signatures for all purposes.

13. Headings

The headings of the Sections of this Agreement are inserted for convenience only and shall not constitute a part of this Agreement.

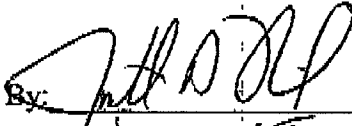
14. Amendment; Successors and Assigns

This Agreement may be amended only by written instrument signed by all Parties. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of all Parties hereto. Nothing contained herein shall be deemed to confer upon any person other than the Parties any right or remedy under or by reason of this Agreement.

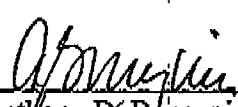
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.



SCHWARZ PHARMA, Inc.

By: 
Justin A. Tate VP-CFO
Its Authorized Officer

Hollister-Stier Laboratories, LLC

By:  07/25/2005
Anthony D. Bonanzino, Ph.D
Its Authorized Officer

AllerQuest LLC


By:  7/27/05
Louis M. Mehlson, M.D.-CED
Its Authorized Officer

EXHIBIT A
TO
TERMINATION AND TRANSFER AGREEMENT

Existing Agreement

See attached.

AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") effective 18 June, 1996 ("Effective Date"), is between Schwarz Pharma, Inc. ("SCHWARZ"), a Delaware corporation having a place of business at 5600 County Line Road, Mequon, Wisconsin 53092, and Bayer Corporation ("BAYER"), acting through its Pharmaceutical Division, an Indiana corporation having a place of business at 400 Morgan Lane, West Haven, Connecticut 06516.

WHEREAS, SCHWARZ is the owner of all rights to a Pre-Pen Product (as defined below) and a method using the Pre-Pen Product for determining if a patient will produce an allergic reaction to penicillin, and has worldwide regulatory approval to market said Pre-Pen Product for that purpose, including an approved New Drug Application ("NDA") with the U.S. Food and Drug Administration ("FDA");

WHEREAS, BAYER desires to acquire from SCHWARZ all rights to the Pre-Pen Product, including the trademark and the goodwill associated with the business of marketing the Pre-Pen Product and all regulatory approvals;

WHEREAS, SCHWARZ has the ability and the facilities to manufacture the Pre-Pen Product in accordance with applicable regulatory requirements and the conditions of the approved NDA for the Pre-Pen Product;

WHEREAS, BAYER desires SCHWARZ to produce the Pre-Pen Product for BAYER to distribute, sell and have sold until such time as BAYER can produce or find an alternate producer of the Pre-Pen Product;

WHEREAS, SCHWARZ is also the owner of all rights to an MDM Product (as defined below) and a method using the MDM Product for determining if a patient will produce an allergic reaction to penicillin;

WHEREAS, SCHWARZ has filed an Investigational New Drug Application ("IND") with the FDA to proceed with clinical trials related to the MDM Product and said IND is currently in effect;

WHEREAS BAYER desires to acquire from SCHWARZ all rights to the MDM Product, including the approved IND for the MDM Product, as set forth below; and

WHEREAS, SCHWARZ currently has an agreement to have the MDM Product manufactured by Marsam Pharmaceuticals, Inc., a Delaware corporation of Cherry Hill, New Jersey ("MARSAM") and the parties desire by agreement with MARSAM for MARSAM to terminate its agreement with SCHWARZ and enter into an agreement to develop and manufacture the MDM Product for BAYER;

NOW, THEREFORE, in consideration of the premises and mutual promises herein expressed, and intending to be legally bound, BAYER and SCHWARZ agree as follows:

1. Definitions

1.1 An "Affiliate" means any person, corporation, firm, partnership or legal entity which directly or indirectly owns, is owned by, or is under the common ownership of a party to this Agreement to the extent of at least fifty percent (50%) of the equity of the owned entity, and any other person, corporation, firm, partnership, or other legal entity actually controlled by, controlling or under common control with a party to this Agreement.

1.2 "Components Necessary to Produce Pre-Pen Product" are benzylpenicilloyl polylysine concentrate U.S.P. at a concentration to allow production of at least forty thousand (40,000) ampules of Pre-Pen Product from sixty-four (64) ml of the benzylpenicilloyl polylysine concentrate U.S.P. as set forth in Exhibit A.

1.3 "MDM Product" means the product described in Exhibit B.

1.4 "Net Sales" shall mean the amount invoiced to third party customers representing sales by a party or its Affiliates or sublicensees of Royalty-Bearing Product less deductions for the following to the extent actually paid or allowed and not reimbursed by the customer or any third party: (i) transportation charges, including insurance; (ii) sales and excise taxes and duties and any other governmental charges imposed upon the sale of such Product; (iii) normal and customary trade, quantity and cash discounts; (iv) government rebates and adjustments; and (v) allowances, chargebacks and credits to customers on account of rejection or return of Royalty-Bearing Product or on account of retroactive price reductions affecting such Product. In addition, a party shall be entitled to deduct from Net Sales any receivables which are deemed to be uncollectible according to that party's internal accounting principles and Generally Accepted Accounting Principles ("GAAP") consistently applied. Such bad debt deduction shall be applied to Net Sales in the period in which such receivables are written off. If all or a portion of the bad debt is subsequently collected, then such amount shall be added to Net Sales in the period in which such is received by the selling party. Sales of Royalty-Bearing Product by a party to its Affiliates or sublicensees are not considered Net Sales, except where such Affiliate or sublicensee is the end user of the Royalty-Bearing Product purchased, but sales by Affiliates or sublicensees to third parties are considered Net Sales by a party.

1.5 "Pre-Pen Product" means the product described in Exhibit A.

1.6 "Quarter" means a three month calendar period ending March 31, June 30, September 30, and December 31 of each year during which this Agreement is in effect.

1.7 "Royalty-Bearing Product" means the MDM Product and/or the Pre-Pen Product.

1.8 A "Trial" means a clinical trial conducted in accordance with the IND for the MDM Product that is required prior to gaining FDA approval to market the MDM Product in the United States under the Federal Food, Drug and Cosmetic Act.

1.9 A "Unit" when referring to the Components Necessary to Produce Pre-Pen Product shall be that quantity of the benzylpenicilloyl polylysine concentrate U.S.P. needed to produce

40,000 ampules of Pre-Pen Product, and when referring to the Pre-Pen Product shall mean that quantity of Pre-Pen Product consisting of five vials, each vial containing a single dose of Pre-Pen Product.

2. Option, License Grant, and Assignment of Rights.

2.1 Upon commencement of this Agreement, SCHWARZ grants the following rights to BAYER:

2.1.1 a fully paid-up, exclusive (even as to SCHWARZ) world-wide license to manufacture, have manufactured, use, test and develop the MDM Product under the entire rights, title and interest in and to such MDM Product for the United States of America, its territories and possessions, and for all other countries, including all intellectual property rights (including without limitation all technical and confidential information, know-how and trade secrets, as well as the rights identified in Exhibit C), orphan drug status and related rights, and all regulatory approvals and applications for regulatory approval (including without limitation the regulatory approvals identified in Exhibit D), for a period of eighteen (18) months commencing on the Effective Date.

2.1.2 upon payment to SCHWARZ of the sum specified in Section 5.1 within ten (10) days after the Effective Date, an exclusive (even as to SCHWARZ), worldwide license to manufacture, have manufactured, use, sell, have sold, and distribute the Pre-Pen Product under the entire rights, title and interest in and to such Pre-Pen Product for the United States of America, its territories and possessions, and for all other countries, including all intellectual property rights (including without limitation all technical and confidential information, know-how and trade secrets, as well as the rights identified in Exhibit C) and all regulatory approvals and applications for regulatory approval (including without limitation the regulatory approvals identified in Exhibit D), for a period of eighteen (18) months commencing on the Effective Date. BAYER shall make further royalty payments to SCHWARZ under the license to the Pre-Pen Product as set forth in Section 5.10 herein.

2.1.3 upon payment to SCHWARZ of the sum specified in Section 5.2, a fully paid-up, exclusive option to acquire the entire rights, title and interest in and to the MDM Product and the Pre-Pen Product, including all intellectual property rights, orphan drug status and all regulatory approvals and applications for regulatory approval relating to such Products, exercisable within ten (10) days after the end of eighteen (18) months from the Effective Date; provided, that such option shall terminate if BAYER has not paid the sum specified in Section 5.2 within ten (10) days after the end of such eighteen (18) month period. Certain intellectual property rights related to the MDM Product and the Pre-Pen Product are identified in Exhibit C. Regulatory approvals and applications for the MDM Product and the Pre-Pen Product are identified in Exhibit D.

2.1.4 Upon the end of eighteen (18) months from the Effective Date and payment by BAYER of the sum specified in Section 5.2 within ten (10) days after the end of such eighteen (18) month period, SCHWARZ shall assign and transfer to BAYER, pursuant to the option granted in Section 2.1.3 and according to Sections 2.2, 6.2 and the forms of assignment attached hereto as Exhibits C and D: (i) the entire rights, title and interest in and to the MDM Product licensed under Section 2.1.1, and (ii) the entire rights, title and interest to the Pre-Pen Product licensed under

Section 2.1.2. BAYER shall make additional payments to SCHWARZ for the rights granted under this Section 2.1.4 and Exhibits C and D in accordance with Sections 5.5, 5.6 (if applicable), 5.8 (if applicable) and 5.9. BAYER shall make royalty payments to SCHWARZ for the Pre-Pen Product in accordance with Sections 5.10 and 5.11 (if applicable), and shall make royalty payments for the Pre-Pen Product and the MDM Product in accordance with Sections 5.12 and 5.13.

2.1.5 Any and all costs or fees associated with recordation of the assignment of rights and property conveyed herein are the responsibility of BAYER. SCHWARZ shall provide any assistance reasonably required by BAYER in connection with the transfer to BAYER of intellectual property rights and regulatory approvals under Section 2.1.4 in accordance with Sections 6.2 and 6.3.

2.2 SCHWARZ represents and warrants that: (i) it owns all right, title and interest in and to all intellectual property rights necessary for the manufacture, use and sale of the Components Necessary to Produce Pre-Pen Product, Pre-Pen Product and MDM Product ("Intellectual Property Rights") free and clear of all liens, licenses, judgments, security interests, encumbrances and other restrictions and SCHWARZ has the full and unrestricted right to license or assign such Intellectual Property Rights as set forth in this Agreement; (ii) no claim by any third party contesting the validity, enforceability, use or ownership of any of the Intellectual Property Rights has been made, is currently outstanding or is threatened, and there are no grounds for the same; (iii) SCHWARZ is not aware of any facts which indicate a likelihood of any infringement or misappropriation by, or conflict with, any third party with respect to the Intellectual Property Rights, nor has SCHWARZ received any claims alleging infringement or misappropriation of, or conflict with, any intellectual property rights of any third party or any offers by any third party to license its intellectual property rights; and (iv) SCHWARZ is not aware of any infringement, misappropriation or conflict which will occur as a result of the manufacture, use or sale of the Components Necessary to Produce Pre-Pen Product, Pre-Pen Product or MDM Product.

2.3 Concurrent with the grant from SCHWARZ to BAYER of an exclusive license to the Pre-Pen Product under Section 2.1.2, BAYER grants back to SCHWARZ a nonassignable, nonexclusive license to make, have made, and sell the Components Necessary to Produce Pre-Pen Product and Pre-Pen Product to BAYER pursuant to Section 4. SCHWARZ shall have no right to sublicense such license.

2.4 BAYER shall purchase from SCHWARZ certain equipment presently owned by SCHWARZ for manufacture of the Pre-Pen Product (the "Pre-Pen Equipment") and the MDM Product (the "MDM Equipment"), as identified on Exhibit E (collectively, the "Equipment"). Upon payment by BAYER of the sums specified in Section 5.3, 5.7 and 5.9, SCHWARZ shall transfer to BAYER according to the form of bill of sale attached hereto as Exhibit E, the entire rights, title and interest in and to the Equipment.

3. Term and Termination of Agreement

3.1 This Agreement shall commence upon the date first written above and shall continue in effect for a period of seven (7) years from the first commercial sale of the MDM Product, subject to the exceptions set forth in Sections 3.1.1 and 3.1.2 below.

3.1.1 BAYER shall have the right to terminate this Agreement prior to the date of expiration set forth herein by written notice to SCHWARZ in the event that a PLA for the MDM Product shall not have been obtained by sixty (60) months from the Effective Date, in which case the provisions of Sections 3.5.3, 5.7, 5.9 and 5.11 shall apply.

3.1.2 This Agreement may be terminated by the parties prior to the date of expiration set forth herein in accordance with Sections 3.2, 3.3 and 3.4 below.

3.2 This Agreement may be terminated by SCHWARZ by written notice to BAYER if, within ten (10) days after the end of eighteen (18) months from the Effective Date, BAYER fails to pay the sums set forth in Sections 5.2 and 5.3.

3.3 If either party materially fails or neglects to perform any material provision of this Agreement and if such default is not corrected within sixty (60) days after receiving written notice from the other party with respect to such default, such other party shall have the right to terminate this Agreement by giving written notice to the party in default, provided the notice of termination is given prior to correction of the default.

3.4 Either party may terminate this Agreement if, at any time, the other party shall file in any court or agency pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of the party or its assets, or if the other party proposes a written agreement of composition or extension of its debts, or if the other party shall be served with an involuntary petition against it, filed in any insolvency proceeding and such petition shall not be dismissed within sixty (60) days after the filing thereof, or if the other party shall propose or be a party to any dissolution or liquidation, or if the other party shall make an assignment for the benefit of creditors.

3.5 Payments Due Upon Termination or Expiration.

3.5.1 Upon termination or expiration of this Agreement, both parties shall pay all sums accrued hereunder which are then due, except as otherwise set forth herein.

3.5.2 In the event that this Agreement shall expire in accordance with Section 3.1, then (i) any payments due SCHWARZ by BAYER at the time of expiration shall be immediately due and payable to SCHWARZ, (ii) BAYER shall not be required to make any payments under this Agreement coming due after the time of expiration, and (iii) to the extent that it has not already done so, SCHWARZ shall fulfill the final sentence of Section 4.2.

3.5.3 In the event that this Agreement shall be terminated by BAYER for failure to obtain a PLA for the MDM Product pursuant to Section 3.1.1, then (i) BAYER shall pay to

SCHWARZ within ten (10) days after the date of termination, the royalty payments specified in Section 5.11 and the Equipment payments set forth in Section 5.7 (if not previously paid) and Section 5.9. (ii) BAYER shall not be required to make any payments under this Agreement coming due after the time of termination other than the royalty payments set forth in Section 5.11 and the Equipment payments set forth in Section 5.7 (if not previously paid) and Section 5.9, and (iii) to the extent that it has not already done so, SCHWARZ shall fulfill the final sentence of Section 4.2.

3.5.4 In the event that this Agreement shall be terminated by BAYER for default by SCHWARZ pursuant to Section 3.3 prior to the payment by BAYER of the sums set forth in Sections 5.2 and 5.3, then (i) any royalty payments due SCHWARZ by BAYER at the time of SCHWARZ's default under the license for the Pre-Pen Product (as such payments are set forth in Section 5.10) shall be immediately due and payable to SCHWARZ. (ii) BAYER shall not be required to make any royalty or other payments under this Agreement coming due after the time of SCHWARZ's default. (iii) BAYER shall return to SCHWARZ all rights granted under the license in Section 2.1.1 as to the MDM Product and under the license granted in Section 2.1.2 as to the Pre-Pen Product, and (iv) the options granted in Section 2.1.3 shall expire.

3.5.5 In the event that this Agreement shall be terminated by BAYER for default by SCHWARZ pursuant to Section 3.4, then (i) any payments due SCHWARZ by BAYER at the time of SCHWARZ's default shall be immediately due and payable to SCHWARZ. (ii) BAYER shall not be required to make any payments under this Agreement coming due after the time of SCHWARZ's default, and (iii) to the extent that it has not already done so, SCHWARZ shall fulfill the final sentence of Section 4.2.

3.5.6 In the event that this Agreement shall be terminated by SCHWARZ pursuant to Section 3.2 or for default by BAYER pursuant to Section 3.3 prior to the payment by BAYER of the sums set forth in Sections 5.2 and 5.3, then (i) any royalty payments due SCHWARZ by BAYER under the license for the Pre-Pen Product (as such payments are set forth in Section 5.10) at the time of BAYER's default shall be immediately due and payable to SCHWARZ. (ii) BAYER shall not be required to make any payments under this Agreement coming due after the time of BAYER's default. (iii) BAYER shall return to SCHWARZ all rights granted under the license in Section 2.1.1 as to the MDM Product and under the license granted in Section 2.1.2 as to the Pre-Pen Product, and (iv) the options granted in Section 2.1.3 shall expire.

3.6 Termination of this Agreement pursuant to Section 3.3 shall not prejudice the right of either party to its remedies, including damages, for breach by the other party.

3.7 Termination or expiration of this Agreement shall terminate all outstanding obligations, representations and liabilities of the parties arising from this Agreement except those described in Sections 2.1.5, 2.2, 3.5.3 and 4.2 (final sentence), 8 and 10, as well as any other provision which is intended by the parties to survive such termination. In addition, any other provision required to interpret and enforce the parties' rights and obligations under this Agreement shall survive this Agreement, but only to the extent that such survival is required for the full observation and performance of this Agreement by the parties hereto. Notwithstanding the foregoing, SCHWARZ shall not be obligated to fulfill the final sentence of Section 4.2 in the event BAYER terminates this Agreement in accordance with the provisions of Section 3.5.4.

4. Production for, and Sale of, the Pre-Pen Product to BAYER.

4.1 Production of Pre-Pen Product and Components Necessary to Produce Pre-Pen Product.

4.1.1 Subject to Sections 4.2 and 4.4, SCHWARZ, at the request of BAYER or BAYER's Affiliates, shall produce the Pre-Pen Product for, and sell the Pre-Pen Product to, BAYER or its Affiliates at a cost of \$11.46 per Unit. Except as the parties may otherwise agree in writing, the obligation of SCHWARZ to manufacture the Pre-Pen Product for BAYER shall not extend beyond eighteen (18) months after the date that BAYER acquires a license to the rights to the Pre-Pen Product under Section 2.1.1; provided that BAYER reserves the right to terminate such manufacturing obligation as provided in Sections 4.1.4 and 4.9; and, provided further, that if BAYER is unable to find and obtain approval for an alternate supplier of the Pre-Pen Product pursuant to Section 4.1.4 and requests in advance of the expiration of such eighteen (18) month period that SCHWARZ supply BAYER with a final order of the Pre-Pen Product, then (i) BAYER shall provide SCHWARZ by the first day of the eighteenth month after the date that BAYER acquires a license to the Pre-Pen Product with a final order of Pre-Pen Product, (ii) SCHWARZ shall deliver to BAYER such final order of the Pre-Pen Product requested by BAYER immediately after production of such final order and (iii) BAYER shall purchase all Pre-Pen Product requested in such final order. SCHWARZ is under no obligation under this Agreement to produce MDM Product for BAYER.

4.1.2 SCHWARZ shall produce for and supply Pre-Pen Product to BAYER in accordance with Section 4.1.1. At any time during the eighteen (18) month period of SCHWARZ's obligation to produce Pre-Pen Product, BAYER may request that SCHWARZ supply the Components Necessary to Produce Pre-Pen Product instead of the Pre-Pen Product in accordance with Section 4.1.3. SCHWARZ's provision of Components Necessary to Produce Pre-Pen Product at BAYER's request and sole option under this Section, and those making reference to it, satisfies its obligation to produce and supply Pre-Pen Product under this Agreement.

4.1.3 Subject to Sections 4.1.2, 4.1.4, 4.2 and 4.4, SCHWARZ, at the request and sole option of BAYER or BAYER's Affiliates, shall produce the Components Necessary to Produce Pre-Pen Product for, and sell the Components Necessary to Produce Pre-Pen Product to, BAYER or its Affiliates at a cost of \$7041.66 per Unit. BAYER will take the Components Necessary to Produce Pre-Pen Product to an FDA-approved facility of BAYER's choosing to have the Pre-Pen Product produced, packaged, labeled, and shipped at BAYER's expense. Except as otherwise specified herein or as the parties may otherwise agree in writing, the obligation of SCHWARZ to manufacture the Components Necessary to Produce Pre-Pen Product for BAYER shall not extend beyond eighteen (18) months after the date that BAYER acquires a license to the rights to the Pre-Pen Product under Section 2.1.1; provided that BAYER reserves the right to terminate such manufacturing obligation as provided in Sections 4.1.4 and 4.9; and, provided further, that if BAYER is unable to find and obtain approval for an alternate supplier of the Pre-Pen Product pursuant to Section 4.1.4 and requests in advance of the expiration of such eighteen (18) month period that SCHWARZ supply BAYER with a final order of the Components Necessary to Produce Pre-Pen Product, then (i) BAYER shall provide SCHWARZ by the first day of the eighteenth month

after the date that BAYER acquires a license to the Pre-Pen Product with a final order of the Components Necessary to Produce Pre-Pen Product (ii) SCHWARZ shall deliver to BAYER such final order of the Components Necessary to Produce Pre-Pen Product requested by BAYER immediately after production of such final order and (iii) BAYER shall purchase all Components Necessary to Produce Pre-Pen Product requested in such final order. SCHWARZ is under no obligation under this Agreement to produce MDM Product for BAYER.

4.1.4 BAYER agrees to exercise its reasonable best efforts to find an alternative supplier of Pre-Pen Product and Components Necessary to Produce Pre-Pen Product prior to expiration of the eighteen (18) month period set forth in Sections 4.1.1 through 4.1.3. If such an alternative supplier is found and approved by all necessary government authorities, including the FDA, before the end of such eighteen (18) month period, SCHWARZ's obligation under Sections 4.1.1, 4.1.2 and 4.1.3 shall be deemed to be fulfilled by SCHWARZ and terminated by BAYER.

4.2 SCHWARZ reserves the right to increase annually the unit price for the Pre-Pen Product or the Components Necessary to Produce Pre-Pen Product after the second anniversary of the first purchase by BAYER of such Pre-Pen Product or such Components Necessary to Produce Pre-Pen Product, provided that SCHWARZ shall not increase such prices by more than the lesser of the increase in SCHWARZ's provable manufacturing costs or the annual increase in the U.S. Producer Price Index for the then most current year available. SCHWARZ's manufacturing costs include, but are not limited to, those costs associated with increased material costs, costs for any change in the location where SCHWARZ manufactures said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product, and costs associated with proving stability of said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product produced after any such a manufacturing location change. SCHWARZ shall provide ninety (90) days notice of any such increase. BAYER shall have the right to audit SCHWARZ's costs pursuant to Section 7.2. Production by SCHWARZ of the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product for, and a sale of the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product by SCHWARZ to, BAYER after the term set forth in Section 4.1, does not indicate any continuing obligation by SCHWARZ to produce the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product for, or sell the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product to, BAYER beyond the term set forth in Section 4.1, except as set forth in Sections 4.1.1 and 4.1.3 or as may be subsequently agreed in writing. If BAYER or its subcontractor wishes to assume the manufacture of the Components Necessary to Manufacture Pre-Pen Product or the Pre-Pen Product, SCHWARZ shall provide or cause to be provided to BAYER all necessary manufacturing documentation, including, but not limited to, raw material specifications, quality control procedures, packaging specifications, manufacturing procedures, and approved raw material suppliers.

4.3 Each purchase of the Pre-Pen Product from SCHWARZ by BAYER shall be in whole number multiples of the minimum batch size of 13.5 liters of the Pre-Pen Product. Each purchase of the Components Necessary to Produce Pre-Pen Product from SCHWARZ by BAYER shall be in whole number multiples of the minimum batch size of Components Necessary to Produce Pre-Pen Product needed to yield 13.5 liters of the Pre-Pen Product.

4.4 BAYER shall submit to SCHWARZ by the first day of each Quarter its order for the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product for the following Quarter.

For planning purposes, BAYER shall provide SCHWARZ by the first day of each quarter with a non-binding annual rolling forecast setting forth by calendar quarter its estimate of the quantities of the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product that it will require to be delivered. Such reports shall be estimates only and shall not constitute purchase orders. SCHWARZ represents and warrants that its and/or its contractors' current manufacturing capacity for the Components Necessary to Produce Pre-Pen Product and the Pre-Pen Product is sufficient to meet BAYER's anticipated demand for the Components Necessary to Produce Pre-Pen Product or the Pre-Pen Product, and SCHWARZ shall notify BAYER immediately if it receives a forecast that exceeds the quantities of the Components Necessary to Produce Pre-Pen Product it is able to produce or that exceeds the quantity of Pre-Pen Product SCHWARZ is able to have produced.

4.5 BAYER shall pay SCHWARZ for each shipment of the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product in U.S. dollars within thirty (30) days after such shipment is received by BAYER.

4.6 SCHWARZ shall ship orders for the Pre-Pen Product F.O.B. SCHWARZ's manufacturing plant shall label such shipments with labeling provided by BAYER at BAYER's cost and shall package shipments in unit containers and other containers required for shipping. SCHWARZ shall ship orders for the Components Necessary to Produce Pre-Pen Product F.O.B. SCHWARZ's manufacturing plant to BAYER directly, or to a facility of BAYER's selection for final manufacture, labeling, packaging and shipping of Pre-Pen Product, such final manufacture, labeling, packaging and shipping to be performed at BAYER's sole expense.

4.7 In the event any shipment of the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product fails to conform to the specifications which are set forth in Exhibit A attached hereto (the "Specifications"), SCHWARZ shall, without charge, promptly replace any such shipments with Pre-Pen Product or Components Necessary to Produce Pre-Pen Product, as were ordered, that are in compliance with such Specifications.

4.8 BAYER shall provide SCHWARZ with six (6) months prior written notice of the date BAYER intends to cease purchase of either the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product from SCHWARZ. Within thirty (30) days of the last day SCHWARZ delivers the final shipment of said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product to BAYER, BAYER shall purchase, at SCHWARZ's cost, SCHWARZ's entire inventory of materials and component parts used by SCHWARZ to produce said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product, which inventory includes all unused materials and all component parts SCHWARZ has in its possession, or is obligated to purchase or order, at the time of SCHWARZ's last delivery of said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product to BAYER ("Inventory"), provided that following receipt of notice from BAYER, SCHWARZ shall take all reasonable steps to reduce such Inventory and any such orders or purchases; and provided further, that BAYER's obligation to purchase said Inventory hereunder shall apply only to that Inventory which BAYER deems, in its sole but reasonable judgment, to meet the Specifications listed in Exhibit A following a reasonable inspection of such Inventory. BAYER shall have the right to audit SCHWARZ's invoices and related documents to verify SCHWARZ's costs for said materials and components pursuant to Section 7.2.

4.9 If SCHWARZ fails to deliver according to the Specifications more than twenty percent (20%) of the Units of Pre-Pen Product or Components Necessary to Produce Pre-Pen Product ordered by BAYER for delivery in any calendar month, and such nondelivery continues for a period of thirty (30) days, SCHWARZ shall credit BAYER with an amount equal to twenty-five percent (25%) of the price to BAYER of the undelivered Units of Pre-Pen Product or Components Necessary to Produce Pre-Pen Product, which credit shall be applied by SCHWARZ to the price of the next shipment to BAYER of the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product. This remedy shall be in addition to all other remedies available to BAYER.

4.10 SCHWARZ shall manufacture the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product in accordance with the Specifications, or cause said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product to be so manufactured, for sale to BAYER or BAYER's Affiliates, in compliance with FDA's Good Manufacturing Practices Regulations ("GMP"), adequate quality control standards and all applicable laws and regulations. All Pre-Pen Product or Components Necessary to Produce Pre-Pen Product delivered to BAYER under this Agreement shall have a remaining shelf life of no less than two (2) years as of the date such Pre-Pen Product is received by BAYER, and of no less than eighteen (18) months as of the date such Components Necessary to Produce Pre-Pen Product are received by BAYER. SCHWARZ shall forthwith notify BAYER of any inspection of its facilities by any regulatory agency and of any actions by any regulatory agency in relation to SCHWARZ regarding the manufacture of Pre-Pen Product or the Components Necessary to Produce Pre-Pen Product.

4.11 Prior to each shipment to BAYER of the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product, SCHWARZ shall conduct such tests as are necessary to verify conformance of said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product to the Specifications utilizing the quality control and quality assurance procedures contained in the Specifications and shall provide BAYER with a Certificate of Analysis for each batch of the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product confirming that such batch has been tested for conformance to the Specifications.

4.12 SCHWARZ and its contractors shall maintain an inventory of raw materials sufficient to manufacture a three (3) month supply of the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product based on the actual average monthly number of Units of said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product purchased by BAYER during the immediately previous six (6) month period. If BAYER requests SCHWARZ to maintain a larger inventory level, then BAYER shall advance to SCHWARZ the moneys needed to purchase sufficient additional raw materials for such additional inventory; provided, however, that BAYER shall receive credit for such advance against its next order of Pre-Pen Product or Components Necessary to Produce Pre-Pen Product.

4.13 SCHWARZ shall keep complete records covering tests required to be performed under this Agreement. SCHWARZ shall permit BAYER personnel to inspect its manufacturing facilities and quality control, testing and other records for the Pre-Pen Product and Components Necessary to Produce Pre-Pen Product at all reasonable times.

5. Additional Duties of BAYER.

BAYER agrees to:

5.1 Pay to SCHWARZ in U.S. dollars [REDACTED] within ten (10) days after the Effective Date as payment for the license granted in Section 2.1.2.

5.2 To exercise the option to acquire the rights to the Pre-Pen Product and the MDM Product set forth in Section 2.1.3 and in partial payment for the assignment of such rights by SCHWARZ pursuant to Section 2.1.4, pay to SCHWARZ in U.S. dollars [REDACTED] within ten (10) days after the end of eighteen (18) months from the Effective Date. Such payment shall comprise a payment of [REDACTED] as the initial payment for the assignment by SCHWARZ of the rights to the Pre-Pen Product; a payment of [REDACTED] as a second payment for the rights to the Pre-Pen Product, and an initial payment of [REDACTED] for the assignment by SCHWARZ of the rights to the MDM Product.

5.3 Pay to SCHWARZ in U.S. dollars [REDACTED] within ten (10) days after the end of eighteen (18) months from the Effective Date. Such payment shall comprise a payment of [REDACTED] as payment in full for the Pre-Pen Equipment set forth on Exhibit E and a payment of [REDACTED] as the first payment for the MDM Equipment set forth on Exhibit E.

5.4 Initiate and thereafter continuously and diligently conduct to the extent it is commercially reasonable to do so, the Trials required to obtain FDA approval for the MDM Product (such Trials to be performed at the sole expense of BAYER), and file for FDA approval of a PLA for the MDM Product in a timely manner after completion of Trials.

5.5 Pay to SCHWARZ in U.S. dollars [REDACTED] within ten (10) days after the end of thirty (30) months from the Effective Date as the final payment for the rights to the Pre-Pen Product.

5.6 Pay to SCHWARZ in U.S. dollars [REDACTED] within ten (10) days of filing for FDA approval of a PLA for the MDM Product as a second payment for the rights to the MDM Product.

5.7 Pay to SCHWARZ in U.S. dollars an additional [REDACTED] within ten (10) days of filing for FDA approval of a PLA for the MDM Product, or within ten (10) days after the date of termination of the Agreement by BAYER for failure to obtain a PLA for the MDM Product pursuant to Section 3.1.1, as a second payment for the MDM Equipment set forth on Exhibit E.

5.8 Pay to SCHWARZ in U.S. dollars [REDACTED] within ten (10) days after receipt of FDA approval of the PLA for the MDM Product as the final payment for the rights to the MDM Product.

5.9 Pay to SCHWARZ in U.S. dollars [REDACTED] within ten (10) days after receipt of FDA approval of the PLA for the MDM Product or within ten (10) days after the date of termination of the Agreement by BAYER for failure to obtain a PLA for the MDM Product pursuant to Section 3.1.1, as the final payment for the MDM Equipment set forth on Exhibit E.

5.10 Pay to SCHWARZ in U.S. dollars a royalty of [REDACTED] (%) of BAYER's gross sales of the Pre-Pen Product for the eighteen (18) month period commencing on the Effective Date under the license for the Pre-Pen Product, in accordance with Section 7.1.

5.11 Upon termination of the Agreement by BAYER for failure to obtain a PLA for the MDM Product pursuant to Section 3.1.1, pay to SCHWARZ in U.S. dollars within ten (10) days after the date of termination, an amount equal to a royalty of [REDACTED] percent (%) of BAYER's gross sales of the Pre-Pen Product for the period commencing nineteen (19) months after the Effective Date and ending sixty (60) months after the Effective Date, and thereafter pay to SCHWARZ, in accordance with Section 7.1, a royalty of [REDACTED] (%) of BAYER's gross sales of the Pre-Pen Product for a period of ten (10) years from the date of termination of the Agreement.

5.12 Pay to SCHWARZ in U.S. dollars an annual royalty in the amount of [REDACTED] percent (%) of the Net Sales of the Pre-Pen Product and the MDM Product for each of the first five (5) years from the date of the first commercial sale of the MDM Product under this Agreement in accordance with Section 7.1, unless this Agreement is terminated by BAYER for failure to obtain a PLA for the MDM Product pursuant to Section 3.1.1.

5.13 Pay to SCHWARZ in U.S. dollars an annual royalty in the amount of [REDACTED] percent (%) of the Net Sales of the Pre-Pen Product and the MDM Product for the sixth and seventh years from the date of the first commercial sale of the MDM Product under this Agreement in accordance with Section 7.1, unless this Agreement is terminated by BAYER for failure to obtain a PLA for the MDM Product pursuant to Section 3.1.1.

5.14 Pay to the FDA any user fee obligations, associated with marketing the Pre-Pen Product, which come due after the date that BAYER obtains rights to the Pre-Pen Product, either by license or assignment as specified in Section 2.1, and the obligation to pay did not exist prior to this Agreement. SCHWARZ represents and warrants that there are no user fees currently due in relation to the Pre-Pen Product.

5.15 Pay any additional costs for packaging or labeling the Pre-Pen Product caused by a change in the Specifications for the Pre-Pen Product or the Components Necessary to Produce Pre-Pen Product, regardless of whether such changes are initiated by BAYER or are required by any authority.

6. Additional Duties of SCHWARZ

SCHWARZ agrees to:

6.1 Terminate its agreement with MARSAM for the manufacture of the MDM Product within five (5) days of BAYER's payment to SCHWARZ of the sums specified in Sections 5.2 and 5.3; provided, however, that SCHWARZ shall not object to BAYER's entering into an Agreement with MARSAM for the development and manufacture of the MDM Product prior to BAYER's payment to SCHWARZ of the sums set forth in Sections 5.2 and 5.3.

6.2 Upon the occurrence of the events set forth in Section 2.1.4, execute the forms of assignment attached as Exhibits C and D and all other instruments necessary to effectuate the assignment of rights set forth in Section 2.1.4, including, without limitation, notifying the FDA and other governmental authorities in writing that SCHWARZ has assigned the regulatory approvals for the MDM Product and Pre-Pen Product set forth in Exhibit D to BAYER.

6.3 Upon the occurrence of the events set forth in Section 2.4, execute the form of bill of sale attached as Exhibit E and all other instruments necessary to effectuate transfer of the Equipment to BAYER.

6.4 Upon request of BAYER or its successors or assigns, or a legal representative thereof: (i) supply all information and evidence of which SCHWARZ has knowledge or possession relating to the making and practice of the Components Necessary to Produce Pre-Pen Product, Pre-Pen Product and MDM Product; (ii) testify in any legal proceeding relating thereto; (iii) provide all assistance reasonably required by BAYER in the preparation and prosecution of any patent applications or application for registration or renewal of a registration covering any of the intellectual property rights transferred pursuant to Section 2.1.4 and execute all instruments proper to patent or obtain other intellectual property protection for the Pre-Pen Product and MDM Product in the name of BAYER or its successors or assigns; (iv) provide all reasonable assistance in dealing with the FDA with respect to the transfer of ownership of the NDA for the Pre-Pen Product to BAYER and to obtain a PLA for the MDM Product and any other regulatory approvals for the MDM Product and Pre-Pen Product, and (v) execute all instruments proper to carry out the intent of this Agreement. BAYER shall reimburse SCHWARZ for the reasonable, out-of-pocket costs of SCHWARZ incurred in complying with this Section 6.3.

6.5 Keep confidential and not disclose any information related to the Components Necessary to Produce Pre-Pen Product, Pre-Pen Product or the MDM Product, except (i) as required for regulatory purposes, subject to seeking confidential treatment where possible; or (ii) to the extent that such information shall come into the public domain other than through the fault of SCHWARZ.

7. Accounting and Payment

7.1 Within thirty (30) days after the close of each Quarter during which such payments are due, BAYER shall pay the royalties due under Sections 5.10, 5.12 and 5.13, and BAYER shall deliver to SCHWARZ at that time a true and accurate accounting of all Royalty-Bearing Product sold by BAYER and its Affiliates and any sublicensees during such Quarter. In the event that

BAYER is required to make the ~~2~~ percent (~~2~~) royalty payments on gross sales of the Pre-Pen Product as specified in Section 5.11. BAYER shall also make such royalty payments in accordance with this Section 7.1.

7.2 Each party shall maintain at its office, accurate and complete books and records of its sales consistent with sound business and accounting practices and in such form and in such detail as to enable the amount of royalty payments and other payments under this Agreement to be determined. Each party shall permit the other or an independent certified accountant appointed by the other party and reasonably acceptable to the first party, at the other party's expense, to examine such books and records at reasonable times mutually agreed upon (such agreement not to be unreasonably withheld) for the purposes of (i) verifying reports and accounting submitted hereunder and (ii) determining the correctness of payments. Monetary conversions from the currency of a foreign country in which a Royalty-Bearing Product is sold into U.S. dollars, shall be calculated at the actual rates of exchange for the year to date as used by that party in producing its quarterly and annual accounts, consistently applied, as confirmed by that party's auditors.

8. Liability and Warranties.

8.1 SCHWARZ warrants that it is a corporation, duly organized under the laws of the State of Delaware and has all corporate power and authority to carry on its business as now being conducted and has full corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

8.2 BAYER warrants that it is a corporation, duly organized under the laws of the State of Indiana and has all corporate power and authority to carry on its business as now being conducted and has full corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

8.3 SCHWARZ warrants that all Pre-Pen Product and Components Necessary to Produce Pre-Pen Product sold to BAYER shall be manufactured in accordance with, and shall conform to, the Specifications, are fit for their intended use and that such Pre-Pen Product and Components Necessary to Produce Pre-Pen Product are and shall be free from defective material and workmanship for two (2) years or eighteen (18) months respectively. Except as otherwise set forth in Sections 8.5 and 10, SCHWARZ's liability under this warranty is limited to replacing any said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product found to be defective during the warranty period. EXCEPT AS PROVIDED IN SECTIONS 8.5 AND 10, SCHWARZ HAS NO LIABILITY WHATSOEVER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. NO OTHER WARRANTY IS MADE OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, UNLESS SO STATED IN WRITING BY AN AUTHORIZED OFFICER OF SCHWARZ. This warranty does not apply to any Pre-Pen Product or Components Necessary to Produce Pre-Pen Product damaged or tampered with through negligence or misuse by any party other than SCHWARZ. SCHWARZ shall not be liable for damage to said Pre-Pen Product or Components Necessary to Produce Pre-Pen Product resulting from shipping, improper storage, or handling after SCHWARZ's delivery to BAYER's carrier at the F.O.B. point.

8.4 Each party shall immediately notify the other in writing immediately after it becomes aware of any defect or condition that may render the Pre-Pen Product or Components Necessary to Produce Pre-Pen Product subject to a product recall or product correction pursuant to any country's laws, rules and regulations. The parties shall promptly share with each other all data on Pre-Pen Product complaints, including but not limited to, complaints or information regarding performance and or allegations or reports of any adverse effects on a patient from use of said Product as soon as such data is available.

8.5 Any recall or product correction of the Pre-Pen Product instituted either at the request of any governmental entity or court of competent jurisdiction or voluntarily by BAYER shall be the responsibility of BAYER, including any expenses related thereto and indemnification of SCHWARZ for any costs incurred therefrom, including the costs of any of SCHWARZ's work in process affected by the recall and, further, SCHWARZ shall be under no obligation to accept a return of recalled Pre-Pen Product from BAYER or from any of BAYER's customers; provided, however, that SCHWARZ shall cooperate fully with BAYER in the conduct of any such recall or product correction; and, provided further, that SCHWARZ shall be responsible for and indemnify BAYER against direct costs and expenses, including the costs associated with the return of recalled Pre-Pen Product from BAYER or any of BAYER's customers, resulting from a recall or product correction, if the primary reason for the recall or product correction arises from defective product manufactured by SCHWARZ or SCHWARZ's failure to comply with any statutory or regulatory requirement.

9. Additional Rights and Obligations of the Parties.

9.1 Both parties shall maintain product liability insurance coverage with reasonable policy limits and name the other party as additional insured on any product liability insurance coverages with respect to the Components Necessary to Produce Pre-Pen Product or the Pre-Pen Product or, in the case of BAYER, shall maintain self-insurance for such purposes. Each party shall provide the other with evidence of such designation or, in the case of BAYER, such self-insurance, on request. Such insurance shall include coverage for manufacturing and design defects in the Components Necessary to Produce Pre-Pen Product or the Pre-Pen Product. Such insurance shall provide a minimum coverage of Ten Million Dollars (US\$10,000,000.00).

10. Indemnification.

10.1 BAYER shall indemnify and hold SCHWARZ harmless from and against any costs, including reasonable attorneys' fees, expenses, or damages resulting from, or otherwise arising out of defects in the Pre-Pen Product primarily attributable to the labeling, advertising, or selling of the Pre-Pen Product by BAYER and its Affiliates, except for costs, expenses, or direct damages resulting from, or otherwise arising out of, defects in the Pre-Pen Product primarily attributable to the negligent or willful acts of SCHWARZ or its agents or contractors.

10.2 SCHWARZ shall indemnify and hold BAYER harmless from and against all costs, including reasonable attorneys fees, expenses, or damages resulting from, or otherwise arising out of: (i) defects in the Components Necessary to Produce Pre-Pen Product or Pre-Pen Product primarily attributable to the negligent or willful acts of SCHWARZ in carrying out its obligations under this Agreement, except for costs, expenses, or direct damages resulting from, or otherwise

arising out of defects in the Components Necessary to Produce Pre-Pen Product or Pre-Pen Product primarily attributable to the negligence or willful acts of BAYER; or (ii) SCHWARZ's breach of the representation and warranty set forth in Section 2.2; or (iii) SCHWARZ's failure to provide manufacturing documentation as set forth in Section 4.2.

10.3 SCHWARZ shall indemnify and hold BAYER harmless from and against all costs, including reasonable attorneys' fees, expenses, or damages resulting from, or otherwise arising out of the sale of the Pre-Pen Product by SCHWARZ prior to the Effective Date.

10.4 Except as set forth in Section 8.5 with respect to direct costs and expenses resulting from a recall or product correction, including the costs associated with the return of recalled Pre-Pen Product from BAYER or any of BAYER's customers, and as set forth in Sections 10.1, 10.2 and 10.3 herein, neither party shall be liable under this Agreement for incidental, consequential, special, or indirect damages.

11. Force Majeure.

If the performance of any part of this Agreement by either party, or if any obligation of either party under this Agreement, is prevented, restricted, interfered with or delayed by reason of any cause beyond the reasonable control of the party liable to perform, the party so affected shall use its reasonable best efforts to avoid or remove such causes of non-performance and shall continue performance with the utmost dispatch whenever such causes are removed. When such circumstances arise, the parties shall discuss what, if any, modification of the terms of this Agreement may be required in order to arrive at an equitable solution.

12. Assignment.

This Agreement shall be binding upon and inure to the benefit of the successors in interest of the respective parties. Neither this Agreement, nor any interest hereunder shall be assignable without the prior written consent of the other party; provided, however, that either party may assign this Agreement to any Affiliate, or to any corporation, firm, partnership or other entity with which it may merge or consolidate, or to which it may transfer all or substantially all of its assets to which this Agreement relates.

13. Notices.

Any notices required or permitted under this Agreement shall be sent by certified mail, postage pre-paid, or confirmed (receipt acknowledged) facsimile to the following addresses of the party:

SCHWARZ PHARMA, INC.
5600 County Line Road
Mequon, Wisconsin 53092
Attention: President

BAYER CORPORATION
400 Morgan Lane
West Haven, Connecticut 06516
Attention: Eric Hoffman

14. Miscellaneous Provisions.

14.1 This Agreement constitutes the entire Agreement between the parties and supersedes all written or oral representations, agreements or understandings concerning the subject matter hereof.

14.2 This Agreement shall be governed by, construed in accordance with, the laws of the state of Connecticut, excluding that body of law applicable to choice of laws. Any disputes or litigation arising from this Agreement shall be heard by a court of competent jurisdiction in the State of Connecticut.

14.3 In the event any portion or provision of this Agreement shall be deemed unenforceable, as written or applied, the balance of such portion or provision and the balance of this Agreement shall continue in full force and effect, as if such unenforceable portion or provision had been deleted or rendered inapplicable to the situations to which such unenforceable portion or provision cannot legally be applied.

14.4 The captions of the articles of this Agreement have no effect on the substantive meaning of the content of this Agreement. The word "including" shall not be deemed to limit any succeeding term or provision.

14.5 This Agreement may only be amended by a writing executed by authorized officers of both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the date first written above.

SCHWARZ PHARMA, INC.

Name: V. [Signature]

Title: PRESIDENT

TD
10/27/16

BAYER CORPORATION

Name: [Signature]

Title: PRESIDENT

EXHIBIT A
Specifications for the Pre-Pen Product and the
Components Necessary to Produce Pre-Pen Product

Pre-Pen Product (benzylpenicilloi polylysine) Specifications:

Concentration	$5.4 \times 10^{-6} - 7.0 \times 10^{-6}$
pH	6.5 - 8.5
Bacterial endotoxins	≤ 5833.0 U.S.P. Endotoxin Units per ml
Buffers	One or more as suitable

Components Necessary to Produce Pre-Pen Product (benzylpenicilloi polylysine concentrate) Specifications:

Concentration	0.0125 - 0.020M
pH	6.5 - 8.5
Buffers	One or more as suitable

EXHIBIT B

Specifications for the MDM Product

<u>Component</u>	<u>Concentration</u>
Benzyipenicillin	10.0mM
Benzyipenicillioate	10.0mM
Benzyipencilloate	10.0mM

EXHIBIT C**ASSIGNMENT**

WHEREAS, Schwarz Pharma, Inc. ("SCHWARZ"), a Delaware corporation, having a place of business at 5600 County Line Road, Mequon, Wisconsin, 53092, is the owner of the trademarks and the trademark registrations therefor, as listed in the attached Schedule A;

WHEREAS, Bayer Corporation ("BAYER"), an Indiana corporation having a principal place of business at 400 Morgan Lane, West Haven, Connecticut 06516, is desirous of acquiring all right, title and interest in and to said marks and said trademark registrations listed on the attached Schedule A, and the goodwill associated therewith ("TRADEMARK PROPERTIES"), and SCHWARZ has agreed to assign the TRADEMARK PROPERTIES to BAYER;

NOW, THEREFORE, for good and valuable consideration, including that listed above, the receipt of which is hereby acknowledged, SCHWARZ does hereby sell, assign and transfer to BAYER, the entire right, title and interest in and to said TRADEMARK PROPERTIES listed in the attached Schedule A, together with the goodwill of the business associated therewith, and all registrations and applications therefor, in the United States and for all foreign countries, including any renewals and extensions of the registrations that are or may be secured under the laws of the United States and all foreign countries, now or hereafter in effect, for Assignee's own use and enjoyment, and for the use and enjoyment of Assignee's successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by the Assignor if this Assignment and sale had not been made; together with all income, royalties or payments due or payable as of the Effective Date or thereafter, including, without limitation, all claims for damages by reason of past, present or future infringement or other unauthorized use of the TRADEMARK PROPERTIES, with the right to sue for, and collect the same for Assignee's own use and enjoyment and for the use and enjoyment of its successors, assigns or other legal representatives. Assignor requests the Commissioner of Patents and Trademarks to record Assignee as the assignee and owner thereof.

Assignor hereby represents and warrants that its right, title and interest in and to the TRADEMARK PROPERTIES set forth in Schedule A are free and clear of any liens and encumbrances, that it has full right to assign all of its interests therein, and that it has not executed and will not execute any agreement or other instrument in conflict herewith.

Assignor shall provide to Assignee, its successors, assigns or other legal representatives, cooperation and assistance at Assignee's request and expense (including the execution and delivery of any and all affidavits, declarations, oaths, samples, exhibits, specimens and other documentation as may be reasonably required): (1) in the preparation and prosecution of any application for registration or any application for renewal of a registration covering any of the TRADEMARK PROPERTIES; (2) in the prosecution or defense of any interference, opposition, infringement or other proceedings that may arise in connection with any of the TRADEMARK PROPERTIES, including, but not limited to, testifying as to any facts relating to the TRADEMARK PROPERTIES assigned herein and this Assignment; (3) in obtaining any additional trademark protection for the TRADEMARK PROPERTIES that Assignee reasonably may deem appropriate.

that may be secured under the laws now or hereafter in effect in the United States or for all foreign countries; and (4) in the implementation or perfection of this Assignment.

SCHWARZ PHARMA, INC.

Date: _____

By: _____

Title: _____

COPY

Witness

EXHIBIT D

Assignment of Regulatory Approvals and Applications and Marketing Rights for the Pre-Pen Product and the MDM Product

WHEREAS, Schwarz Pharma, Inc. ("SCHWARZ"), a Delaware corporation, having a place of business at 5600 County Line Road, Mequon Wisconsin, 53092, is the owner of the following Regulatory Approvals and Applications:

<u>Product</u>	<u>Country</u>	<u>Type</u>	<u>File No.</u>
Pre-Pen	U.S.	NDA	50-114
Pre-Pen	Canada	DIN	00328693
Pre-Pen	U.S.	Biologics Lic.	153
MDM	U.S.	Biologics IND	BB IND 4262
MDM	U.S.	Orphan Drug	87-187

WHEREAS, Bayer Corporation ("BAYER"), an Indiana corporation having a principal place of business at 400 Morgan Lane, West Haven, Connecticut 06516, is desirous of acquiring said Regulatory Approvals and Applications, and SCHWARZ has agreed to transfer such Regulatory Approvals and Applications to BAYER;

NOW, THEREFORE, in consideration of and in exchange for the sum of \$1.00 (One Dollar) and other good and valuable consideration, including that listed above, the receipt of which is hereby acknowledged, SCHWARZ does hereby sell, assign and transfer to BAYER, the entire right, title and interest in and to said Regulatory Approvals and Applications together with the marketing rights associated therewith. SCHWARZ shall notify the United States Food and Drug Administration ("FDA") and the government agency in Canada having similar purpose or powers in writing of its assignment to BAYER of the Regulatory Approvals and Applications hereunder within five (5) days of the execution of this Agreement.

SCHWARZ PHARMA, INC.

Date: _____

By: _____

Title: _____

Witness

SPBYR14.FIN
7/12/96 12:30

EXHIBIT E**BILL OF SALE**

This BILL OF SALE, ASSIGNMENT AND TRANSFER, dated _____, from Schwarz Pharma, Inc. ("SCHWARZ"), a Delaware corporation having a place of business at 5600 County Line Road, Mequon, Wisconsin 53092, and Bayer Corporation ("BAYER"), an Indiana corporation having its principal place of business at 400 Morgan Lane, West Haven, Connecticut 06516.

WITNESSETH

Pursuant to the Agreement dated _____ (hereinafter "Agreement") and for consideration in the amount of Five Hundred Seven Thousand, Three Hundred Fifty-Nine Dollars and Eighteen Cents (US\$507,359.18), receipt of which is hereby recognized, SCHWARZ hereby sells, conveys, assigns, transfers, sets over and delivers unto BAYER, and unto its successors and assigns forever, all right, title and interest in and to the equipment listed below ("Equipment"):

Pre-Pen Equipment List

Peristaltic Pump	\$ 3,000.00
Amicon Filtration Device with Filter	10,000.00
Milipore Filter Housing with HA Filter	<u>2,000.00</u>
Pre-Pen Subtotal	\$15,000.00

MDM Equipment List

Neslab Modified CFT-75A Refrigerator	5,173.18
Lyophilizer (Type SMH 601) and associated costs	390,050.87
Jacket Pressure Tanks (4)	<u>3,341.30</u>
Stainless Steel Lab Trays for Freeze Dryer (35)	5,430.00
Hewlett Packard PaintJet Color Printer	<u>942.00</u>
Space Saver Desiccators (6), Distilling Flasks (4), Heating Plates 150x75 mm (8), Beakers (4), Stoppers (6), Kim Jars 6x18 in. (4)	<u>1,512.72</u>
Lab Freezer - 10 cu. ft. (1), Trap Vacuum (1), Red Tubing, Smoke Eliminator (1), Thermometer Clamps of varying sizes, Flasks 200 ml (6), 125 mm Funnels 2000 ml (4) 4000 ml Pyrex Plus Flasks 4000 ml (2), Standard Lab Jack (2), Stirrer, Various other size beakers and flasks, stoppers, miscellaneous low-value accessories	<u>3,398.68</u> <u>692.84</u>
Stirring Mantel 2000 ml (1)	15,186.34
Additional Labor and Materials to install Freeze Dryer	19,118.67
Laminar Flow Addition and Installation	869.96
Laminar Flow Lexan Curtains	<u>2,151.49</u>
Vial Wash Plate	

Refrigerator Circulator and Accessories	1,744.78
Printer Supplies and Modifications	<u>1,509.37</u>
Capping Machine	19,250.00
Oven Truck	4,222.00
Oven Trays	5,112.00
Karl Fischer Coulometer	6,474.52
Vial Filter Adjustment	<u>561.64</u>
Hi-Accuracy Probe with Programming	<u>1,001.36</u>
Micro-Comb pH Probe	<u>187.50</u>
FPS2 Infeed for 2 ml Vial Filler	<u>1,174.00</u>
Miscellaneous Modifications and Equipment	<u>363.96</u>
MDM Subtotal	<u>\$492,359.18</u>
Equipment Total	<u>\$507,359.18</u>

EXPENSE 19,596.82

The Pre-Pen Equipment is currently located at SCHWARZ's facility in Mequon, Wisconsin. The MDM Equipment is in the possession of Marsam Pharmaceuticals, Inc., a Delaware corporation, of Cherry Hill, New Jersey ("Marsam"). Any costs incurred in moving the Equipment from its current location, including the cost of removal, packing, shipping, and transporting Equipment, is the sole responsibility of BAYER.

SCHWARZ represents and warrants that it has good and marketable title to all of the Equipment and that Marsam has no rights in such Equipment. Other than as set forth herein, the Equipment is sold as is, and no warranties, implied or express, concerning the condition of the Equipment or its fitness for a particular purpose or its merchantability are given by SCHWARZ to BAYER.

From time to time, SCHWARZ will execute and deliver (or cause their affiliates to execute and deliver) to BAYER such instruments of sale, transfer, conveyance, assignment and delivery, and such consents, assurances, powers of attorney and other instruments as may be reasonably requested by BAYER or its counsel in order to vest in BAYER all right, title and interest of SCHWARZ in and to the Equipment and otherwise in order to carry out the purpose and intent of this Bill of Sale.

Except for the warranties set forth in this Bill of Sale, nothing contained in this Bill of Sale shall in any way supersede, modify, replace, amend, change, rescind, waive, exceed, expand, enlarge or in any way affect the provisions set forth in the Agreement nor shall this Bill of Sale expand or enlarge any remedies under the Agreement including without limitation any rights to indemnification specified therein. This Bill of Sale is intended only to effect the transfer of certain property sold and purchased pursuant to the Agreement and shall be governed entirely in accordance with the terms and conditions of the Agreement.



AMENDMENT

Pharmaceutical
Division

Allergy Products

David J. Stellingworth
Vice President
Allergy Products and
Business Unit Head

May 28, 1998

Mr. J. Vaughan
Director Business Analysis
Schwarz Pharma
5600 W. County Line Road
Moghan, WI 53092

Dear:

With reference to the recently signed amendment to our agreement (May 19, 1998) please find attached a check for the sum of \$100,000. As agreed, this will be credited against the payment installment now due September 28, 1998.

Sincerely,

D. J. Stellingworth
D.J. Stellingworth
Vice President, Allergy Products
Business Unit Head

Attachment

Bayer Corporation
3525 North Regal Street
Spokane, WA 99207-5700
Phone: 509 482-3527
Fax: 509 484-4320

344j@schwarz-pharma.doc 5/28/98



Pharmaceutical
Division

Allergy Products

Walter G. Bauernschmidt
Director
Product Management
and Strategic
Business Development

Amendment 1

May 18, 1998

John Vaughan
Director Business Analysis
Schwarz Pharma
5600 W. County Line Road
Moghan, WI 53092

Dear John:

With your letter of May 8, 1998, and our recent exchanges of correspondence dated April 28, 1998 (Vaughan to Bauernschmidt) and May 5, 1998 (Bauernschmidt to Vaughan), I believe we have resolved the impediments described in David Stallingworth's letter of March 24, 1998.

One minor clarification is called for. My letter and your May 8, 1998 response referred to May 18, 1998 and September 18, 1998 as the original extended Bayer option exercise dates. Actually, the contract (Section 5.2) provides an additional ten (10) days after those dates for Bayer to exercise that option if it so elects. For consistency with the contract, I believe we have reached agreement on the following matters and amendments to the November 18, 1997 contract:

1. Schwarz Pharma will, ASAP, schedule production of the requested lots. These lots will be produced under the observation of two individuals from Bayer/Marsam. The cost to produce these lots will be billed to Bayer and the inventory will become the property of Bayer.
2. Access to the requested samples will be provided.
3. The time for this evaluation and for Bayer to exercise its option rights under the contract are extended from May 28, 1998 to September 28, 1998 (including the 10 day period contained in Section 5.2).

Bayer Corporation
3525 North Regal Street
Spokane, WA 99207-5786
Phone: 509 466-2529
Fax: 509 482-1712
E-mail:
w.bauernschmidt@bayer.com

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John Vaughan
Schwarz Pharma
May 19, 1998
Page 2

- 4. In consideration for these agreements, Bayer will immediately pay to Schwarz Pharma the sum of \$100,000. It is understood and agreed that this \$100,000 payment is a credit to Bayer contract payment obligations. However, in the event Bayer does not elect to proceed through the exercise of its option under Section 5, that payment is non-refundable and remains the property of Schwarz Pharma.

If this reflects your understanding and agreement, please provide me with your written confirmation and we will proceed to conclude manufacturing arrangements.

Sincerely,



William G. Bauernschmidt
Director,
Product Management and
Strategic Business Development

Accepted and agreed to
this 20th day of May, 1998.



John Vaughan
Director - Business Analysis
Schwarz Pharma

AMENDMENT 2



Pharmaceutical Division

Allergy Products

William G. Bauernschmidt
Director
Product Management
and Strategic
Business Development

September 28, 1998

Mr. John Vaughan
Schwarz Pharma
P.O. Box 2038
Milwaukee, WI 53201

Dear John:

Attached is the signed Second Amendment Agreement to the PRE-PEN®/MDM contract. For the purpose of clarification, I'd like to point out that it is our understanding that the definition of PRE-PEN® concentrate is the same as Schedule A of the original agreement and that the manufacture of 400 mLs of PPC is in excess of your current inventory.

If you have any questions or comments, please don't hesitate to contact me.

Sincerely,

William G. Bauernschmidt
Director
Product Management and
Strategic Business Development
WGB/dlj

cc: D. Stellingworth

Bayer Corporation
3525 North Regal Street
Spokane, WA 99207-9796
Phone: 509 482-3529
Fax: 509 482-1712
E-mail:
william.bauernschmidt@bayer.com

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SECOND AMENDMENT TO AGREEMENT

This Amendment is made as of this 23rd day of September, 1998, by and between SCHWARZ PHARMA, INC., a Delaware Corporation ("SCHWARZ") and BAYER CORPORATION, acting through its Pharmaceutical Division, an Indiana corporation ("BAYER").

WHEREAS, SCHWARZ and BAYER entered into the Agreement for the sale and purchase of the SCHWARZ products known as Pre-Pen[®] and the MDM Product effective November 18, 1996 ("Agreement"); and

WHEREAS, SCHWARZ and BAYER entered into an amendment to said Agreement effective May 19, 1998, which extended BAYER's time for evaluation of the subject matter of said Agreement from May 18, 1998 to September 18, 1998 ("Amendment"); and

WHEREAS, said Amendment included a payment to SCHWARZ by BAYER of \$100,000.00, which was to be creditable against any final purchase price paid by BAYER or to be non-refundable to the benefit of SCHWARZ in the event that BAYER elects not to proceed; and

WHEREAS, SCHWARZ and BAYER wish to amend certain terms of said Agreement and Amendment;

NOW, THEREFORE, the parties hereby amend said Agreement and Amendment, and have mutually agreed as follows:

1. SCHWARZ hereby commits to the manufacture for and transfer to BAYER of a quantity of 400 mls of the Pre-Pen[®] concentrate, no later than January 31, 1999, at agreed to transfer price as stated in the Agreement.
2. In the event that SCHWARZ fails to deliver such inventory of said concentrate, no later than January 31, 1999, BAYER has the right to void the Agreement, and SCHWARZ shall be obligated to reimburse BAYER all funds paid to SCHWARZ under the terms of the transaction as contemplated by the Agreement, except that SCHWARZ shall not be obligated to refund the following payments:
 - a. \$250,000.00 as paid at the execution of the Agreement; and
 - b. \$100,000.00 non-refundable payment made to SCHWARZ as part of the Amendment.
3. Further, in the event that SCHWARZ fails to deliver such inventory of said concentrate, no later than January 31, 1999, and BAYER elects to void the Agreement, BAYER shall:

Page 2 of 2
Second Amendment
September 23, 1998

- a. be committed to refund all Net Sales, less product cost and less direct expenses (including royalties paid to SCHWARZ), incurred by BAYER recorded in the period from September 29, 1998 to date BAYER elected to void Agreement.
 - b. be committed to return all remaining inventory for cash credit or as a reduction against 3(a).
4. The exchange of funds as described in paragraphs 2 and 3 above, are the parties only recourse in the event that SCHWARZ failed to deliver such inventory of said concentrate, no later than January 31, 1999, and BAYER elected to void the Agreement.

The wording of this Second Amendment in no way alters, amends or otherwise changes any and all other terms, conditions and obligations under the Agreement and Amendment. All other terms, conditions and obligations of the Agreement and the Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be signed by their duly authorized officers and attested as of the date noted above.

SCHWARZ PHARMA, INC.

BAYER CORPORATION,
acting through the
Pharmaceutical Division

Klaus Veitinger

 Klaus Veitinger
 President

Anthony Bonanzino 09/23/98

 NAME: Anthony Bonanzino
 TITLE: V.P. Plant Operations

EXHIBIT B
TO
TERMINATION AND TRANSFER AGREEMENT

Third Party Agreements

None for Schwarz.

None for H-S.