UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2022

OR

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

For the transition period from _____ to _____

Commission File Number: 001-40971

AURA BIOSCIENCES, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**32-0271970**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
80 Guest Street Boston, MA	**02135**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (617) 500-8864

85 Bolton Street, Cambridge, Massachusetts 02140
(Former Name or Former Address, if Changed Since Last Report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.00001 per share	AURA	Nasdaq Global Market LLC

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes ☒ No ☐

As of August 8, 2022, the registrant had 29,273,647 shares of common stock, $0.00001 par value per share, outstanding.

Summary of the Material Risks Associated with Our Business

Our business is subject to numerous material and other risks and uncertainties that you should be aware of in evaluating our business. These risks are described more fully in Part II, "Item 1A—Risk Factors," and include, but are not limited to, the following:

- We have incurred significant net losses since our inception and anticipate that we will continue to incur losses for the foreseeable future.
- Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish proprietary rights to our technologies or product candidates.
- Our ability to generate revenue and achieve profitability depends significantly on our ability to achieve our objectives relating to the discovery, development and commercialization of our product candidates.
- We are heavily dependent on the success of belzupacap sarotalocan (AU-011), our only product candidate to date.
- If we are not able to obtain, or if there are delays in obtaining, required regulatory approvals for belzupacap sarotalocan, we will not be able to commercialize, or will be delayed in commercializing, our product candidates, and our ability to generate revenue will be materially impaired.
- We have not yet successfully initiated or completed any pivotal clinical trials nor commercialized any pharmaceutical products, which may make it difficult to evaluate our future prospects.
- If we fail to develop additional product candidates, or obtain additional indications of our first product candidate our commercial opportunity could be limited.
- We expect to rely on third parties to conduct our clinical trials and some aspects of our research and preclinical testing, and those third parties may not perform satisfactorily, including failing to meet deadlines for the completion of such trials, research or testing.
- We currently rely on third-party contract manufacturing organizations, or CMOs, for the production of clinical supply of belzupacap sarotalocan and may continue to rely on CMOs for the production of commercial supply of belzupacap sarotalocan, if approved. This reliance on CMOs increases the risk that we will not have sufficient quantities of such materials, product candidates, or any therapies that we may develop and commercialize, or that such supply will not be available to us at an acceptable cost, which could delay, prevent, or impair our development or commercialization efforts.
- If belzupacap sarotalocan or any future product candidates do not achieve broad market acceptance, the revenue that we generate from their sales may be limited, and we may never become profitable.
- If the market opportunity for belzupacap sarotalocan is smaller than we estimate or if any regulatory approval that we obtain is based on a narrower definition of the patient population, our revenue and ability to achieve profitability will be adversely affected, possibly materially.
- Our ability to compete may decline if we do not adequately protect our proprietary rights, and our proprietary rights do not necessarily address all potential threats to our competitive advantage.
- If we lose key management personnel, or if we fail to recruit additional highly skilled personnel, our ability to pursue our business strategy will be impaired, could result in loss of markets or market share and could make us less competitive.
- Business disruptions could seriously harm our future revenue and financial condition and increase our costs and expenses.
- Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant influence over matters subject to stockholder approval.

Special Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q, or the Quarterly Report, contains forward-looking statements which are made pursuant to the safe harbor provisions of Section 27A of the Securities Act of 1933, as amended, or the or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. All statements other than statements of historical facts contained in this Quarterly Report are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “may”, “will”, “should”, “expects”, “intends”, “plans”, “anticipates”, “believes”, “estimates”, “predicts”, “potential”, “continue” or the negative of these terms or other comparable terminology. These statements are not guarantees of future results or performance and involve substantial risks and uncertainties. Forward-looking statements in this Quarterly Report include, but are not limited to, statements about:

- the initiation, timing, progress, results, and cost of our research and development programs and our current and future preclinical studies and clinical trials, including statements regarding the timing of initiation and completion of studies or trials and related preparatory work, the period during which the results of the trials will become available, and our research and development programs;
- our ability to efficiently develop our existing product candidates and discover new product candidates;
- our ability to successfully manufacture our drug substances and product candidates for preclinical use, for clinical trials and on a larger scale for commercial use, if approved;
- the ability and willingness of our third-party strategic collaborators to continue research and development activities relating to our development candidates and product candidates;
- our ability to obtain funding for our operations necessary to complete further development and commercialization of our product candidates;
- our ability to obtain and maintain regulatory approval of our product candidates;
- our ability to commercialize our products, if approved;
- the pricing and reimbursement of our product candidates, if approved;
- the implementation of our business model, and strategic plans for our business and product candidates;
- the scope of protection we are able to establish and maintain for intellectual property rights covering our product candidates;
- estimates of our future expenses, revenues, capital requirements, and our needs for additional financing;
- the potential benefits of strategic collaboration agreements, our ability to enter into strategic collaborations or arrangements, and our ability to attract collaborators with development, regulatory and commercialization expertise;
- future agreements with third parties in connection with the commercialization of product candidates and any other approved product;
- the size and growth potential of the markets for our product candidates, and our ability to serve those markets;
- our financial performance;
- the rate and degree of market acceptance of our product candidates;
- regulatory developments in the United States and foreign countries;
- our ability to produce our products or product candidates with advantages in turnaround times or manufacturing cost;
- the success of competing therapies that are or may become available;
- our ability to attract and retain key scientific or management personnel;
- the impact of laws and regulations;
- developments relating to our competitors and our industry;
- the effect of the ongoing COVID-19 pandemic, including mitigation efforts and economic effects, on any of the foregoing or other aspects of our business operations, including but not limited to our preclinical studies and clinical trials and any future studies or trials; and
- other risks and uncertainties, including those listed under the caption “Risk Factors.”

Table of Contents

Item 1. Financial Statements.

Aura Biosciences, Inc.

Condensed Consolidated Balance Sheets
(Unaudited)
(in thousands, except share and per share amounts)

	June 30, 2022	December 31, 2021
Assets		
Current assets:		
Cash and cash equivalents	$ 53,849	$ 149,063
Marketable securities	68,282	—
Restricted cash and deposits	28	23
Prepaid expenses and other current assets	5,510	4,618
Total current assets	127,669	153,704
Restricted cash and deposits, net of current portion	893	125
Right of use assets - operating lease	656	950
Property and equipment, net	5,803	5,251
Total Assets	$ 135,021	$ 160,030
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	1,198	2,401
Short-term operating lease liability	633	615
Accrued expenses and other current liabilities	3,981	4,256
Total current liabilities	5,812	7,272
Long-term operating lease liability	51	360
Warrant liability	67	83
Total Liabilities	5,930	7,715
Commitments and Contingencies (Note 12)		
Stockholders' Equity:		
Common stock, $0.00001 par value, 150,000,000 authorized at June 30, 2022 and December 31, 2021, and 29,266,848 and 29,211,643 shares issued and outstanding at June 30, 2022 and December 31, 2021, respectively	—	—
Additional paid-in capital	307,659	304,452
Accumulated deficit	(178,440)	(152,137)
Accumulated other comprehensive loss	(128)	—
Total Stockholders' Equity	129,091	152,315
Total Liabilities and Stockholders' Equity	$ 135,021	$ 160,030

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

Aura Biosciences, Inc.

Condensed Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)
(in thousands, except share and per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Operating Expenses:				
Research and development	$ 9,510	$ 6,632	$ 17,786	$ 10,817
General and administrative	4,306	$ 2,169	8,841	3,911
Total operating expenses	13,816	8,801	26,627	14,728
Total operating loss	(13,816)	(8,801)	(26,627)	(14,728)
Other income (expense):				
Change in fair value of warrant liability	61	(3)	16	1
Change in fair value of derivative liability	—	(52)	—	(52)
Interest income, including amortization and accretion income	292	4	319	3
Other expense	(5)	—	(11)	(3)
Total other income (expense)	348	(51)	324	(51)
Net loss	(13,468)	(8,852)	(26,303)	(14,779)
Net loss attributable to common stockholders—basic and diluted (Note 13)	(13,468)	(12,480)	(26,303)	(20,738)
Net loss per share attributable to common stockholders—basic and diluted	(0.46)	(28.53)	(0.90)	(49.49)
Weighted average common stock outstanding—basic and diluted	29,251,480	437,464	29,232,661	419,059
Comprehensive loss:				
Net loss	$ (13,468)	$ (8,852)	$ (26,303)	$ (14,779)
Other comprehensive items:				
Unrealized loss on marketable securities	(123)	—	(128)	—
Total other comprehensive loss	(123)	—	(128)	—
Total comprehensive loss	$ (13,591)	$ (8,852)	$ (26,431)	$ (14,779)

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

Aura Biosciences, Inc.

Condensed Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit)
(Unaudited)
(in thousands, except share data)

	Convertible Preferred Stock														Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Series A		Series A-1		Series A-2		Series B		Series C-1 and C-2		Series D-1 and D-2		Series E						
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance, December 31, 2020	1,701,141	$ 3,368	3,298,732	$ 7,837	4,324,998	$ 5,373	22,531,819	$ 20,806	91,327,903	$ 41,099	72,348,452	$ 49,593	—	$ —	381,123	$ —	$ 8,173	$ (116,886)	$ (108,713)
Issuance of Series D Tranche 2, convertible preferred stock, net of issuance costs of $18	—	—	—	—	—	—	—	—	—	—	10,128,771	6,982	—	—	—	—	—	—	—
Issuance of Series E convertible preferred stock, net of issuance costs of $232	—	—	—	—	—	—	—	—	—	—	—	—	102,671,041	80,251	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	185	—	185
Stock option exercises	—	—	—	—	—	—	—	—	—	—	—	—	—	—	54,296	—	265	—	265
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(5,927)	(5,927)
Balance, March 31, 2021	1,701,141	$ 3,368	3,298,732	$ 7,837	4,324,998	$ 5,373	22,531,819	$ 20,806	91,327,903	$ 41,099	82,477,223	$ 56,575	102,671,041	$ 80,251	435,419	$ —	$ 8,623	$ (122,813)	$ (114,190)
Stock-based compensation expense	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	271	—	271
Stock option exercises	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3,649	—	20	—	20
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(8,852)	(8,852)
Balance, June 30, 2021	1,701,141	$ 3,368	3,298,732	$ 7,837	4,324,998	$ 5,373	22,531,819	$ 20,806	91,327,903	$ 41,099	82,477,223	$ 56,575	102,671,041	$ 80,251	439,068	$ —	$ 8,914	$ (131,665)	$ (122,751)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss Amount	Total Stockholders' Equity
	Shares	Amount				
Balance, December 31, 2021	29,211,643	$ —	$ 304,452	$ (152,137)	$ —	$ 152,315
Stock-based compensation expense	—	—	1,594	—	—	1,594
Stock option exercises	5,593	—	17	—	—	17
Unrealized loss on marketable securities	—	—	—	—	(5)	(5)
Net loss	—	—	—	(12,835)	—	(12,835)
Balance, March 31, 2022	29,217,236	$ —	$ 306,063	$ (164,972)	$ (5)	$ 141,086
Stock-based compensation expense	—	—	1,287	—	—	1,287
Stock option exercises	49,612	—	309	—	—	309
Unrealized loss on marketable securities	—	—	—	—	(123)	(123)
Net loss	—	—	—	(13,468)	—	(13,468)
Balance, June 30, 2022	29,266,848	$ —	$ 307,659	$ (178,440)	$ (128)	$ 129,091

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

Aura Biosciences, Inc.

Condensed Consolidated Statements of Cash Flows
(Unaudited)
(in thousands)

	Six Months Ended June 30,	
	2022	**2021**
Cash flows from operating activities:		
Net loss	$ (26,303)	$ (14,779)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expense	552	385
Change in fair value of warrant liability	(16)	(1)
Change in fair value of derivative liability	—	52
Stock-based compensation expense	2,881	456
Accretion on marketable securities	(143)	—
Other	(4)	(1)
Changes in operating assets and liabilities:		
Prepaid expenses and other assets	(892)	396
Accounts payable	(1,515)	1,612
Accrued expenses and other liabilities	(388)	246
Net cash used in operating activities	(25,828)	(11,634)
Cash flows from investing activities:		
Purchases of property and equipment	(673)	(733)
Purchase of marketable securities	(71,266)	—
Maturities of marketable securities	3,000	—
Net cash used in investing activities	(68,939)	(733)
Cash flows from financing activities:		
Proceeds from exercise of stock options	326	285
Proceeds from issuance of Series D convertible preferred stock, net of issuance costs	—	6,982
Proceeds from issuance of Series E convertible preferred stock, net of issuance costs	—	80,246
Payment made for deferred offering costs	—	(280)
Net cash provided by financing activities	326	87,233
Net (decrease) increase in cash, cash equivalents and restricted cash	(94,441)	74,866
Cash, cash equivalents and restricted cash at beginning of period	149,211	17,487
Cash, cash equivalents and restricted cash at end of period	$ 54,770	$ 92,353
Supplemental disclosure of cash flow information:		
Purchases of property and equipment in accounts payable and accrued expenses and other liabilities	$ 426	$ 152
Initial measurement of right-of-use assets and lease liabilities for operating lease	$ —	$ 536
Remeasurement of right-of-use assets and lease liabilities for lease modification	$ —	$ 390
Right-of-use assets obtained in exchange for operating lease liabilities	$ —	$ 516
Deferred offering costs in accounts payable	$ —	$ 55

The following table provides a reconciliation of cash, cash equivalents, and restricted cash reported within the balance sheets that sum to the total of the same such amounts shown in the unaudited condensed consolidated statements of cash flows (in thousands):

	Six Months Ended June 30,	
	2022	**2021**
Cash and cash equivalents, end of period	$ 53,849	$ 92,197
Short-term restricted cash, end of period	28	31
Long-term restricted cash, end of period	893	125
Cash, cash equivalents and restricted cash at end of period	$ 54,770	$ 92,353

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

1. Description of Business

Aura Biosciences, Inc. (the "Company" or "Aura") is a clinical-stage biotechnology company leveraging its novel targeted oncology platform to develop a potential new standard of care across multiple cancer indications, with an initial focus on ocular and urologic oncology. Within these unaudited condensed consolidated financial statements, unless the context otherwise requires, references to the Company or Aura refer to Aura Biosciences, Inc and its subsidiary on a consolidated basis. The Company's proprietary platform enables the targeting of a broad range of solid tumors using Virus-Like Particles, or VLPs, that are manufactured using standard recombinant protein technology. These synthetic VLPs can be conjugated with drugs or loaded with nucleic acids to create Virus-Like Drug Conjugates, or VDCs. The Company's VDCs are largely agnostic to tumor type and can recognize a surface marker, known as HSPGs, that are specifically modified and more broadly expressed on many tumors. The Company is developing belzupacap sarotalocan, its first VDC product candidate for the first line treatment of primary choroidal melanoma, a rare disease with no drugs approved. The Company is also developing belzupacap sarotalocan for additional ocular oncology indications, including choroidal metastases, and in non-muscle invasive bladder cancer, or NMIBC. Aura's team combines expertise in cancer cell biology, ophthalmology, and targeted therapies together with experience in the development and commercialization of orphan products for significant unmet medical needs. Aura's headquarters are located in Boston, Massachusetts.

The Company's operations to date have consisted primarily of conducting research and development and raising capital.

The Company is subject to risks common to companies in the biotechnology industry, including, but not limited to, the successful development and commercialization of products, fluctuations in operating results and financial risks, need for additional financing or alternative means of financial support or both to fund its current operating plan, protection of proprietary technology and patent risks, compliance with government regulations, dependence on key personnel and collaborative partners, competition, customer demand, management of growth, and the effectiveness of marketing by the Company.

Reverse Stock Split

On October 22, 2021, the Company effected a reverse stock split of the Company's common stock on a 1-for-13.7 basis, or the Reverse Stock Split. In connection with the Reverse Stock Split, the conversion ratio for the Company's convertible preferred stock was proportionately adjusted such that the common stock issuable upon conversion of such preferred stock was decreased in proportion to the Reverse Stock Split. Accordingly, all common stock share and per share amounts, for all periods presented in these unaudited condensed consolidated financial statements, have been retroactively adjusted, to reflect this reverse stock split and adjustment of the convertible preferred stock conversion ratios.

Initial Public Offering

On November 2, 2021, the Company completed its initial public offering or the IPO, in which it issued and sold 6,210,000 shares of common stock, including the full exercise of the underwriters' option to purchase additional shares at a price to the public of $14.00 per share for aggregate gross proceeds of $86.9 million. The Company received approximately $78.3 million in net proceeds after deducting underwriting discounts, commissions and offering expenses.

Liquidity

Through June 30, 2022, the Company has funded its operations primarily with proceeds from the initial closing and additional closings of its convertible preferred stock financings, through its license agreements, and through its IPO. The Company has incurred recurring losses and negative operating cash flows from operations since its inception, including net losses of $26.3 million and $14.8 million for the six months ended June 30, 2022 and 2021, respectively. As of June 30, 2022, the Company had cash and cash equivalents and marketable securities of $122.1 million and an accumulated deficit of $178.4 million. The Company expects to continue to generate operating losses for the foreseeable future.

As of the issuance date of these unaudited condensed consolidated financial statements for the six months ended June 30, 2022, the Company expects that its cash and cash equivalents and marketable securities will be sufficient to fund its operating expenses and capital expenditure requirements through at least 12 months from the issuance of these condensed consolidated financial statements. The future viability of the Company beyond that point is dependent on its ability to raise additional capital to finance its operations.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, or U.S. GAAP. In management's opinion, the accompanying unaudited condensed consolidated financial statements include all adjustments, consisting of normal recurring adjustments, which are necessary to present fairly the Company's financial position, results of operations, and cash flows. The financial data and other information disclosed in these notes related to the three months and six months ended June 30, 2022 and 2021 are also unaudited. The unaudited condensed results of operations are not necessarily indicative of the operating results that may occur for the full fiscal year ending December 31, 2022. Certain information and footnote disclosures normally included in annual consolidated financial statements prepared in accordance with U.S. GAAP have been omitted pursuant to instructions, rules, and regulations prescribed by the United States Securities and Exchange Commission, or the SEC. Management believes that the disclosures provided here are adequate to make the information presented not misleading when these unaudited condensed consolidated financial statements are read in conjunction with the audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K.

Significant Accounting Policies

The Company's significant accounting policies are disclosed in the audited consolidated financial statements for the year ended December 31, 2021, in the Company's Annual Report on Form 10-K filed with the SEC on March 23, 2022. There have been no changes to the Company's significant accounting policies except as noted below.

Marketable Securities

All marketable securities have original maturities greater than 90 days. The Company has classified its investments with maturities beyond one year as short-term, based on their highly liquid nature and because such marketable securities represent the investment of cash that is available for current operations. The Company considers its investment portfolio of marketable securities to be available-for-sale. Accordingly, these investments are recorded at fair value. Unrealized gains and losses are reported as the accumulated other comprehensive items in stockholders' equity. Amortization and accretion of premiums and discounts are recorded in other income (expense) within the consolidated statements of operations and comprehensive loss. Realized gains or losses are included in interest income or interest expense, respectively. If any adjustment to fair value reflects a decline in value of the investment, the Company considers all available evidence such as industry, financial inputs, and capital markets data to evaluate the extent to which the decline is other than temporary and, if so, marks the investment to market on the Company's condensed consolidated statement of operations and comprehensive loss.

Recently Adopted Accounting Pronouncements

The Company assessed the recent accounting pronouncements for the six months ended June 30, 2022 and determined no pronouncements have material impact to the condensed consolidated financial statements.

Accounting Pronouncements Not Yet Adopted

In June 2016, the FASB issued ASU No. 2016-13, "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments," which was subsequently amended in November 2018 through ASU No. 2018-19, "Codification Improvements to Topic 326, Financial Instruments—Credit Losses." ASU No. 2016-13 will require entities to estimate lifetime expected credit losses for trade and other receivables, net investments in leases, financing receivables, debt securities and other instruments, which will result in earlier recognition of credit losses. Further, the new credit loss model will affect how entities in all industries estimate their allowance for losses for receivables that are current with respect to their payment terms. ASU No. 2018-19 further clarifies that receivables arising from operating leases are not within the scope of Topic 326. Instead, impairment from receivables of operating leases should be accounted for in accordance with Topic 842, Leases. As per the latest ASU 2020-02, FASB deferred the timelines for certain small public and private entities, thus the new guidance will be adopted by the Company for the annual reporting period beginning January 1, 2023, including interim periods within that annual reporting period. The standard will apply as a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is adopted. The Company does not expect adoption of this new guidance to have a material impact on its results of operations, financial condition, and financial statement disclosures.

3. Fair Value of Assets and Liabilities

The following table presents information about the Company's financial assets and liabilities measured at fair value on a recurring basis and indicates the level of the fair value hierarchy utilized to determine such fair values as of June 30, 2022 and December 31, 2021 (in thousands):

Description	June 30, 2022	Quoted prices active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant other observable inputs (Level 3)
Financial assets				
Cash equivalents:				
Money market funds	$ 50,851	$ 50,851	$ —	$ —
Marketable securities:				
Commercial paper	30,735	—	30,735	—
Corporate bonds	20,580	—	20,580	—
U.S. Government agencies	16,967	—	16,967	—
Total financial assets	$ 119,133	$ 50,851	$ 68,282	$ —
Financial liabilities				
Warrant Liability	$ 67	$ —	$ —	$ 67
Total financial liabilities	$ 67	$ —	$ —	$ 67

Description	December 31, 2021	Quoted prices active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant other observable inputs (Level 3)
Financial assets				
Cash equivalents:				
Money market funds	$ 24,063	$ 24,063	$ —	$ —
Total financial assets	$ 24,063	$ 24,063	$ —	$ —
Financial liabilities				
Warrant Liability	$ 83	$ —	$ —	$ 83
Total financial liabilities	$ 83	$ —	$ —	$ 83

The fair value of the warrant liability was determined based on Level 3 inputs and utilizing the Black-Scholes option pricing model (see Note 10). Significant changes to these assumptions would result in increases or decreases to the fair value of the warrant liability.

During the six months ended June 30, 2022 and 2021, there were no transfers into or out of Level 3.

The following table set forth a summary of changes in the fair value of the common stock warrants, which represents a recurring fair value measurement that is classified within Level 3 of the fair value hierarchy. Changes in fair value are recognized in other (expense) income as "Change in fair value of warrant liability" in the Company's unaudited condensed consolidated statements of operations and comprehensive loss (in thousands):

Common Stock (12,686 warrants)	
Fair value at December 31, 2021	$ 83
Change in fair value	(16)
Fair value at June 30, 2022	$ 67

4. Property and Equipment, Net

Property and equipment, net, consisted of the following (in thousands):

	June 30, 2022	December 31, 2021
Assets under construction	$ 2,179	$ 2,365
IT equipment	85	85
Leasehold improvements	13	13
Lab equipment	6,751	5,489
Office furniture	63	63
	$ 9,091	$ 8,015
Less—accumulated depreciation	(3,288)	(2,764)
Property and equipment, net	$ 5,803	$ 5,251

Depreciation expense was $0.3 million and $0.2 million for the three months ended June 30, 2022 and 2021, respectively. Depreciation expense was $0.6 million and $0.4 million for the six months ended June 30, 2022 and 2021, respectively.

5. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following (in thousands):

	June 30, 2022	December 31, 2021
Prepaid insurance	$ 1,083	$ 2,734
Prepaid research and development expenses	4,118	1,754
Prepaid license agreements	48	64
Other	261	66
Prepaid expenses and other current assets	$ 5,510	$ 4,618

6. Marketable Securities

Marketable securities consist of the following (in thousands):

	June 30, 2022			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value
Commercial paper	$ 30,735	$ —	$ —	$ 30,735
Corporate bonds	20,686	—	(106)	$ 20,580
U.S. Government agencies	16,989	—	(22)	$ 16,967
Total	$ 68,410	$ —	$ (128)	$ 68,282

There were no impairments of the Company's assets measured and carried at fair value during the six months ended June 30, 2022.

7. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following (in thousands):

	June 30, 2022	December 31, 2021
Accrued research and development expenses	$ 1,594	$ 1,686
Accrued compensation	1,887	2,147
Other	500	423
Accrued expenses and other current liabilities	$ 3,981	$ 4,256

8. Equity

The Company had 150,000,000 authorized shares of common stock, par value $0.00001 per share, of which 29,266,848 and 29,211,643 shares were issued and outstanding at June 30, 2022 and December 31, 2021, respectively.

Upon closing of the IPO on November 2, 2021, all of the Company's outstanding shares of convertible preferred stock automatically converted into 22,550,561 shares of common stock. In addition, the Company authorized 10,000,000 shares of preferred stock, par value $0.00001 per share, all of which shares of preferred stock will be undesignated.

9. Stock-Based Compensation

2018 Stock Option and Incentive Plan

On December 12, 2018, the Company adopted the Aura Biosciences, Inc. 2018 Equity Incentive Plan (the “2018 Plan”). The 2018 Plan will expire in 2028. Under the 2018 Plan, Aura may grant incentive stock options, non-qualified stock options, restricted and unrestricted stock awards and stock right. The Board of Directors (the "Board") has determined not to make any further awards under the 2018 Plan as of November 2, 2021. However, the 2018 Plan will continue to govern outstanding equity awards granted thereunder.

2021 Stock Option and Incentive Plan

The 2021 Stock Option and Incentive Plan, (the "2021 Plan"), was adopted by the Board on October 7, 2021, approved by the Company’s stockholders on October 22, 2021 and became effective on November 1, 2021. The 2021 Plan permits the granting of both options to purchase common stock intended to qualify as incentive stock options under Section 422 of the Code and options that do not so qualify. The number of shares initially reserved for issuance under the 2021 Plan was 3,352,166, which increased on January 1, 2022 and will continue to increase each January 1 thereafter, by 5% of the outstanding number of shares of common stock on the immediately preceding December 31 or such lesser number of shares as determined by the Company’s compensation committee. The maximum number of shares of common stock that may be issued in the form of incentive stock options shall not exceed the initial limit, cumulatively increased on January 1, 2022 and on each January 1 thereafter by the lesser of the annual increase for such year or 3,352,166 shares of common stock. On January 1, 2022, the shares reserved for issuance was increased to 4,812,748 shares.

2021 Employee Stock Purchase Plan

The 2021 Employee Stock Purchase Plan, (the "ESPP"), was adopted by the Board on October 7, 2021, approved by the Company’s stockholders on October 22, 2021 and became effective on November 1, 2021. A total of 335,217 shares of common stock were initially reserved for issuance under this plan, which increased on January 1, 2022 and will continue to increase each January 1 thereafter through January 1, 2031, by the least of (i) 335,217 shares of common stock, (ii) 1% of the outstanding number of shares of common stock on the immediately preceding December 31 or (iii) such lesser number of shares of common stock as determined by the administrator of the ESPP. On January 1, 2022, the shares reserved for issuance was increased to 627,333 shares.

Stock Options

With the transfer of the available options from the 2018 Plan to the 2021 Plan, there were 3,570,917 options available for grant under the 2021 Plan at June 30, 2022.

The Board is authorized to administer the 2021 Plan. In accordance with the provisions of the 2021 Plan, the Board determines the terms of Aura options and other awards issued pursuant thereto, including the following:

- which employees, directors and consultants shall be granted awards;
- the number of shares of common stock subject to options and other awards;
- the exercise price of each option, which generally shall not be less than fair market value of the common stock on the date of grant;
- the termination or cancellation provisions applicable to options;
- the terms and conditions of other awards, including conditions for repurchase, termination or cancellation, issue price and repurchase price; and
- all other terms and conditions upon which each award may be granted in accordance with the 2018 Plan.

In addition, the Board may award restricted shares of common stock and restricted stock units to participants subject to such conditions and restrictions as it may determine. The Board or any committee to which the Board delegates authority may, with the consent of the affected plan participants, re-price or otherwise amend outstanding awards consistent with the terms of the 2021 Plan.

The following table summarizes stock option activity under the 2018 Plan and 2021 Plan for the six months ended June 30, 2022:

	Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2021	4,232,991	$ 7.43	8.66	$ 40,437
Granted	269,997	17.38		
Exercised	(55,205)	5.90		
Cancelled/Forfeited	(312,571)	11.06		
Outstanding at June 30, 2022	4,135,212	$ 7.82	8.32	$ 27,145
Exercisable at June 30, 2022	1,457,054	$ 4.18	6.89	$ 14,575

The weighted-average grant date fair value of stock options granted during the six months ended June 30, 2022 and 2021 was $11.56 and $3.56 per share, respectively. The fair value of options vested during the six months ended June 30, 2022 and 2021 was $1.2 million and $0.5 million, respectively. The total intrinsic value of options exercised was $0.6 million and $0.01 million for the six months ended June 30, 2022 and 2021, respectively.

The Company has elected to use the Black-Scholes option pricing model to determine the fair value of options granted and generally recognizes the compensation cost of stock-based awards on a straight-line basis over the vesting period of the award.

The determination of the fair value of stock-based payment awards utilizing the Black-Scholes option pricing model is affected by the estimated fair value of the Company's common stock and a number of other assumptions, including expected volatility, expected life, risk-free interest rate, and expected dividends.

The fair value of the stock options issued for the six months ended June 30, 2022 and 2021 was measured with the following weighted-average assumptions:

	Six Months Ended June 30,		Three Months Ended June 30,	
	2022	2021		
Risk-free interest rate	2.53%	1.07%	3.09%	1.07%
Expected term (years)	5.90	6.01	5.84	6.01
Expected volatility of the underlying stock	75.44%	74.37%	76.85%	74.43%
Expected dividend rate	—%	—%	—%	—%

Restricted Stock Units

The Company has granted restricted stock units with service-based vesting conditions. Unvested shares of restricted common stock may not be sold or transferred by the holder.

A summary of the restricted stock units activity during the six months ended June 30, 2022 is as follows:

	Restricted Stock Units	Weighted-Average Grant Date Fair Value
Unvested at December 31, 2021	231,920	$ 14.00
Forfeited	(24,987)	14.00
Unvested at June 30, 2022	206,933	$ 14.00

As a result of the 2021 Equity Incentive Plan, the Company granted restricted stock units which vest in increments of 25% annually over a period of four years. No restricted stock units vested during the six months ended June 30, 2022.

Stock-based Compensation Expense

The Company recorded stock-based compensation expense as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Research and development	$ 465	$ 62	$ 1,020	$ 106
General and administrative	822	$ 209	1,861	350
Total	$ 1,287	$ 271	$ 2,881	$ 456

As of June 30, 2022, there was $14.9 million of unrecognized compensation expense related to stock options, which is expected to be recognized over a weighted-average period of 2.87 years.

As of June 30, 2022, there was $2.4 million of unrecognized compensation expense related to restricted stock units, which is expected to be recognized over a weighted-average period of 3.33 years.

10. Common Stock Warrants

In February 2015 and May 2015, the Company issued warrants to purchase 1,650,098 and 887,536 shares of Series B convertible preferred stock, respectively, at an exercise price of $1.24235 per share (the "Series B Warrants"). Each Series B Warrant was immediately exercisable and expires ten years from the original date of issuance. Pursuant to FASB ASC Topic 480, Distinguishing Liabilities from Equity, the Series B Warrants were classified as a liability and are re-measured to fair value at each balance sheet date and immediately prior to exercise. A total of 173,827 of the Series B Warrants were outstanding as of June 30, 2021. The Series B Warrants were converted into warrants to purchase 12,686 shares of common stock with an exercise price of $17.03 upon the completion of the IPO in November 2021. A total of 12,686 of the common stock warrants remained outstanding as of June 30, 2022.

The warrants were valued using the Black-Scholes option pricing model. The estimated fair value of the warrants and the significant assumptions used were as follows:

Common Stock Warrants	June 30, 2022
Fair value	$ 14.17
Volatility	85.11 %
Expected term (years)	2.66
Risk free rate	2.99 %
Dividend yield	7.00 %

11. Compensation

In January 2012, the Company adopted the Aura Biosciences 401(k) Profit Sharing Plan and Trust (the “401(k) Plan”) for its employees, which is designed to be qualified under Section 401(k) of the Internal Revenue Code. Eligible employees are permitted to contribute to the 401(k) Plan within statutory and 401(k) Plan limits. The Company makes matching contributions of 100% of the first 6% of employee contributions. The Company made matching contributions in the amount of $0.3 million and $0.1 million for the six months ended June 30, 2022 and 2021, respectively.

12. Commitments and Contingencies

Lease Commitments

The Company has historically entered into lease arrangements for its facilities. The Company has one operating lease for its office and laboratory facility with required future minimum payments. The lease does not contain any options to renew, terminate, or purchase the underlying asset.

On March 31, 2021, the Company executed an amendment to the facility lease which included an extension of the expiration date of the original leased premises, the addition of 4,516 square feet of laboratory space with a commencement date of May 1, 2021, and the addition of 1,000 square feet of laboratory space with a commencement date of June 15, 2021. The lease term for the original and new spaces will expire on July 31, 2023, with an option to renew for an additional 12 months.

Upon the execution of the amendment, which was deemed to be a lease modification, the Company re-evaluated the assumptions made at the original lease commencement date. The Company determined the amendment consists of two separate contracts under ASC 842. One contract is related to the modification of term for the original space, and the other is related to a new right-of-use for the two additional spaces, which are to be accounted for as new leases. The Company remeasured the lease liability and corresponding right-of-use asset for the original space as of the effective date of the amendment to reflect the extended term and recorded in the second quarter of 2021 an additional right-of-use asset and lease liability upon lease commencement of each of the additional space.

On May 16, 2022, the Company entered into an office and laboratory lease in Boston, MA with an initial 10-year term and one renewal option to extend the lease for an additional seven years. Estimated payments due under the initial term total $35.2 million. The lease requires a letter of credit totaling $0.8 million which is classified as long-term restricted cash and deposits on the condensed consolidated balance sheet. The landlord will reimburse the Company up to $0.5 million for certain costs related to expansion of the laboratory space. As of June 30, 2022, the Company has not received access to the space and construction plans have not started. In addition, as of June 30, 2020, there are no right of use assets and lease liabilities on the condensed consolidated balance sheet. The term of the lease commenced on August 1, 2022.

The Company also leases office and laboratory equipment for which the related expense is immaterial.

The following table contains a summary of the lease costs recognized under ASC 842 and other information pertaining to the Company's leases for the three and six months ended June 30, 2022 and 2021 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Lease Cost				
Amortization of finance right-of-use assets	$ —	$ 3	$ —	$ 11
Operating lease costs	155	129	309	216
Variable lease costs	161	76	337	142
Short-term lease costs	2	—	4	—
Total lease costs	$ 318	$ 208	$ 650	$ 369

Cash paid for amounts included in the measurement of lease liability—finance leases	$ —	$ 15
Cash paid for amounts included in the measurement of lease liability—operating leases	$ 305	$ 214
Weighted-average remaining lease term—finance leases (years)	—	—
Weighted-average remaining lease term—operating leases (years)	1.08	2.08
Weighted-average discount rate—finance leases	—	7.94 %
Weighted-average discount rate—operating leases	3.51 %	3.51 %

The following table reconciles the future minimum commitments to the Company's operating lease liabilities at June 30, 2022 (in thousands): The table does not include the Boston lease entered into as the lease commenced on August 1, 2022.

	Operating lease payments as of June 30, 2022
2022	$ 319
2023	377
Thereafter	—
Total lease payments	696
Less: interest	(12)
Total operating lease liabilities at June 30, 2022	684
Less: current portion of lease liabilities	633
Lease liabilities, net of current portion	$ 51

Laser Purchasing Commitment

On April 5, 2019, the Company entered into a purchase agreement for equipment with future commitments payable in three installments of €0.2 million each. The first two installments of €0.2 million were paid by the Company in April 2019 and August 2019. Upon receipt of the laser systems, the Company will assess whether the laser systems have an alternative future use and, if so, will capitalize the lasers as a component of fixed assets.

License Agreements

The Company has entered into the following key agreements that relate to the core technology under development:

LI-COR Exclusive License and Supply Agreement

In January 2014, the Company entered into an Exclusive License and Supply Agreement, or the LI-COR Exclusive License agreement with LI-COR, Inc. (LI-COR) for the license of IRDye 700DC and related licensed patents for the treatment and diagnosis of ocular cancers in humans as amended in January 2016, July 2017, April 2018 and April 2019. The LI-COR Exclusive License Agreement required a one-time upfront license issue fee of $0.1 million and aggregate milestone payments of up to $0.2 million upon certain regulatory and development milestones. The Company is also required to pay LI-COR low-single digit royalties on net sales. The term of the LI-COR Exclusive Agreement expires on a country-by-country basis, until the longer of (i) ten years from the first commercial sale of a licensed product in such country and (ii) the last to expire valid claim in such country.

The Company recognized no expenses related to this agreement and related amendments for the three and six months ended June 30, 2022 and 2021, respectively.

LI-COR Non-Exclusive License and Supply Agreement

In December 2014, the Company entered into a Non-Exclusive License Agreement with LI-COR for the supply of IRDye 700DX to the Company for the treatment and diagnosis of non-ocular solid tumor cancers in humans. Under the 2014 Non-Exclusive, the Company paid a license issue fee of $0.03 million on the effective date. The Company must also pay LI-COR a non-refundable, non-creditable fee of $0.03 million per each licensed product upon pre-IND designation, as defined of such licensed product, aggregate milestone payments of up to $0.3 million upon certain regulatory and development milestones; and during the term, the Company must pay LI-COR a low-single digit percentage royalty on net sales. LI-COR receives 10% of all sublicensee income within 30 days of the Company's receipt from the sublicensee. The 2014 Non-Exclusive Agreement also required the Company to make certain payments upon the achievement of specified development and commercial milestones of up to $0.4 million in aggregate. During the six months ended June 30, 2022 and 2021, the Company recognized immaterial milestones related to this agreement.

Life Technologies Corporation

In December 2014, the Company entered into a non-exclusive, perpetual license agreement with Life Technologies Corporation ("Life Technologies"), which allows for five licensed products. Under this agreement the Company is required to pay an initial license fee of $0.1 million for each product. An annual development fee of $0.1 million is due within a year from payment of the initial license fee and due annually or earlier of (i) payment of a commercialization fee or (ii) all development work is terminated. The commercialization fee is a one-time, non-refundable, non-creditable fee of $0.3 million due upon receipt of approval of a licensed product. In the event of a change of control, there will be a change of control fee of $0.2 million.

In January 2022, the Company entered into the First Amendment to the non-exclusive, perpetual license agreement with Life Technologies for use of the license in an additional indication. The cost of this amendment was a one-time fee of $0.05 million.

During the six months ended June 30, 2022 and 2021, the Company recognized $0.05 million and $0.03 million of expenses related to this agreement.

National Institute of Health (NIH)-Biologic Materials License Agreement

In December 2010, the Company entered into a Biologic Materials License Agreement with NIH for a non-exclusive right to use materials described in Schiller et al., Virology 2004 Apr.10, 321(2):205-16. This agreement required a one-time non-refundable license issuance fee of $0.02 million. No future milestone payments or royalties are due under this agreement.

National Institute of Health (NIH)-Collaboration Research and Development Agreement

In July 2011, the Company entered into a Collaboration Research and Development Agreement (CRADA), with Dr. John Schiller at the NIH, for a period of two years with the rights to an exclusive license to all technology generated within the collaboration. Under this agreement, the Company is required to make annual payments of $0.03 million to fund the research activities, the first payment of which was paid within 30 days of the effective date. Subsequent payments are due within 30 days of the anniversary of the effective date. This agreement was first amended in 2012, 2013, 2014, 2015, 2016, 2018 and most recently in September of 2020. During the six months ended June 30, 2022 and 2021, the Company paid $nil million and $0.03 million of research collaboration fees related to this agreement.

A seventh amendment was made in October 2020, requiring payment of $0.04 million within 30 days of October 1, 2020, and another $0.03 million within 30 days of the 10th anniversary of the CRADA, which was paid in July 2021. This seventh amendment extended the term of the CRADA to September 30, 2022.

The Company recognized no milestones related to this agreement and related amendments for the six months ended June 30, 2022 and 2021.

National Institute of Health (NIH)-Exclusive Patent License Agreement

In September 2013, the Company entered into an exclusive patent license agreement (the "NIH Exclusive License Agreement") with the NIH, that required the Company to pay a license issue royalty of $0.1 million and reimburse the NIH for any patent expenses incurred. Under the agreement, the Company is required to make low single-digit percentage royalty payments based on specified levels of annual net sales of licensed products subject to certain specified reductions. The Company is required to make development and regulatory milestone payments of up to $0.7 million in aggregate and sales milestone payments up to $0.6 million in the aggregate. The Company is also required to pay NIH a mid-single to low teen-digit percentage of any sublicensing revenue the Company receives. Additionally, the Company's payment obligations to the NIH are subject to an annual minimum royalty payment of low five figures. The Company recognized no expenses for patent licensing fees for the six months ended June 30, 2022 and 2021.

In 2015, 2018 and 2019, the Company amended its exclusive patent license to include updates on the status of the commercial development and update/expand the list of licensed patents and patent applications. Each of those amendments required a $0.03 million payment that the Company paid.

Inserm-Transfert License Agreement

In November 2009, the Company entered into an exclusive, royalty-bearing patent license agreement with Inserm-Transfert of France. The agreement expires on a country by country basis based on the last to expire any patent encompassed within the scope of the patent rights or 10 years from the date of the first commercial sales by the Company, whichever is later. The IND filing milestone of €0.01 million was accrued in 2016 and paid in 2017 by the Company. The milestones for the successful Phase I, II and III clinical trials are based on receiving a final report and achieving the primary endpoints defined in that trial, and those milestones have not been achieved as of June 30, 2022. Upon the sublicense by the Company of a product for which royalties are payable under the agreement, low- to mid-single-digit royalty payments would be due by the Company. The non-milestone payments in this agreement are subject to an anti-stacking clause. The Company did not incur any expense in the six months ended June 30, 2022 and 2021.

Clearside

In July 2019, the Company entered into an exclusive license agreement with Clearside Biomedical, Inc. ("Clearside"), for the license of Clearside's Suprachoroidal Microneedle Technology for use in the treatment of indeterminate lesions and choroidal tumors. Upon execution of the License Agreement, the Company paid Clearside an upfront payment of $0.1 million which was expensed as incurred. Under the Clearside License Agreement, the Company is required to pay milestones up to $21.0 million in the aggregate upon the achievement of specified regulatory and development milestones, and upon the achievement of certain commercial sales milestones. The Company is also required to pay low to mid-single digit royalties on net sales. If the Company sublicenses a product for which royalties are payable, then the Company is required to pay the greater of 20% received or low single digit royalties on net sales.

The Clearside License agreement expires on a country-by-country basis upon the later of the last to expire patent or ten years from the date of the first commercial sale of a product.

The Company recognized no expenses related to this agreement and related amendments for the six months ended June 30, 2022 and 2021.

13. Net Loss Per Share

Basic net loss per share is calculated by dividing the net loss attributable to common stockholders by the weighted average number of shares of common stock outstanding during the period, without consideration for potentially dilutive securities. Diluted net loss per share is the same as basic net loss per share for the periods presented since the effects of potentially dilutive securities are antidilutive given the net loss of the Company.

The Company has calculated basic and diluted net loss per share for the three and six months ended June 30, 2022 and 2021 as follows (in thousands, except share and per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2022	2021	2022	2021
Numerator:				
Net loss	$ (13,468)	$ (8,852)	$ (26,303)	$ (14,779)
Less: Accruals of dividends of preferred stock	—	(3,628)	—	(5,959)
Net loss attributable to common stockholders—basic and diluted	$ (13,468)	$ (12,480)	$ (26,303)	$ (20,738)
Denominator:				
Weighted-average common stock outstanding	29,251,480	437,464	29,232,661	419,059
Net loss per share attributable to common stockholders—basic and diluted	$ (0.46)	$ (28.53)	$ (0.90)	$ (49.49)

The following potentially dilutive securities were excluded from the computation of the diluted net loss per share for the periods presented because their effect would have been antidilutive:

	Six Months Ended June 30,	
	2022	2021
Convertible preferred stock	—	22,550,561
Stock options to purchase common stock	4,135,212	2,908,580
Restricted stock units that vest into common stock	206,933	—
Warrants to purchase preferred stock	—	12,686
Warrants to purchase common stock	12,686	—
Total potential dilutive shares	4,354,831	25,471,827

14. Income Taxes

The Company estimates an annual effective tax rate of 0% for the year ending December 31, 2022 as the Company incurred losses for the three and six months ended June 30, 2022, and is forecasting additional losses through the remainder of fiscal year ending December 31, 2022, resulting in an estimated net loss for both financial statement and tax purposes for the year ending December 31, 2022. Therefore, no federal or state income taxes are expected and none have been recorded at this time. Income taxes have been accounted for using the liability method.

Due to the Company's history of losses since inception, there is not enough evidence at this time to support that the Company will generate future income of a sufficient amount and nature to utilize the benefits of its net deferred tax assets. Accordingly, the deferred tax assets have been reduced by a full valuation allowance, since the Company does not currently believe that realization of its deferred tax assets is more likely than not.

As of June 30, 2022, the Company had no unrecognized income tax benefits that would reduce the Company's effective tax rate if recognized.

15. Subsequent Events

Subsequent events have been evaluated through the date of filing of the unaudited condensed consolidated financial statements. The Company has identified the following subsequent events that require disclosure.

Boston Lease

On May 16, 2022, the Company entered into an office and laboratory lease in Boston, MA with an initial 10-year term and one renewal option to extend the lease for an additional seven years. Estimated payments due under the initial term total $35.2 million. The lease requires a letter of credit totaling $0.8 million which is classified as long-term restricted cash and deposits on the condensed consolidated balance sheet. The landlord will reimburse the Company up to $0.5 million for certain costs related to expansion of the laboratory space. The term of the lease commenced on August 1, 2022.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis should be read in conjunction with the unaudited condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report. This discussion and analysis and other parts of this Quarterly Report contain forward-looking statements based upon current beliefs, plans and expectations that involve risks, uncertainties and assumptions, such as statements regarding our plans, objectives, expectations, intentions and projections. Our actual results and the timing of selected events could differ materially from those anticipated in these forward-looking statements as a result of several factors, including those set forth under Part II, Item 1A, "Risk Factors" and elsewhere in this Quarterly Report. You should carefully read the "Risk Factors" section of this Quarterly Report to gain an understanding of the important factors that could cause actual results to differ materially from our forward-looking statements. Please also see the section entitled "Special Note Regarding Forward-Looking Statements."

Overview

We are a clinical-stage biotechnology company leveraging our novel targeted oncology platform to develop a potential new standard of care across multiple cancer indications, with an initial focus on ocular and urologic oncology. Our proprietary platform enables the targeting of a broad range of solid tumors using Virus-Like Particles, or VLPs, that can be conjugated with drugs or loaded with nucleic acids to create Virus-Like Drug Conjugates, or VDCs. Our VDCs are largely agnostic to tumor type and can recognize a surface marker, known as heparan sulfate proteoglycans, or HSPGs, that are specifically modified and broadly expressed on many tumors. Belzupacap sarotalocan, our first VDC candidate, is being developed for the first line treatment of primary choroidal melanoma, a rare disease with no drugs approved. We have completed a Phase 1b/2 trial using intravitreal administration that has demonstrated a statistically significant growth rate reduction in patients with prior active growth and high levels of tumor control with visual acuity preservation in a majority of patients, as assessed using clinical endpoints in alignment with the feedback from U.S. Food and Drug Administration, or the FDA. These data supported advancement into a Phase 2 dose escalation trial, where we are currently evaluating suprachoroidal, or SC, administration of belzupacap sarotalocan. We plan to present six to twelve-month safety and efficacy data from this trial in 2022 and make a decision on the route of administration to initiate a pivotal trial in the second half of 2022. We are also developing belzupacap sarotalocan for additional ocular oncology indications and plan to file an IND in the United States in the second half of 2022 for choroidal metastases. Leveraging our VDCs' broad tumor targeting capabilities and having received fast track designation by the FDA for belzupacap sarotalocan for the treatment of non-muscle invasive bladder cancer, or NMIBC, we intend to initiate a Phase 1 trial in NMIBC, our first non-ophthalmic solid tumor indication, in the third quarter of 2022 and plan to present initial data from this trial in 2023.

We were incorporated as a Delaware corporation in 2009 and, as of August 1, 2022, our headquarters are located in Boston, Massachusetts. Since our inception, we have focused our efforts on identifying and developing potential product candidates, conducting preclinical studies and clinical trials, organizing and staffing our company, business planning, establishing our intellectual property portfolio, raising capital, conducting discovery, research and development activities and providing general and administrative support for these operations. We do not have any product candidates approved for sale and have not generated any revenue to date. We have funded our operations primarily through the sale of convertible preferred stock, common stock, and warrants. From inception through June 30, 2022, we have raised an aggregate of approximately $218.9 million of gross proceeds primarily from private placements of our equity and convertible preferred stock as well as through the issuance of our common stock. In November 2021, we issued and sold 6,210,000 shares of our common stock, including the full exercise of the underwriters' option to purchase additional shares at a price to the public of $14.00 per share for aggregate gross proceeds of $86.9 million in our initial public offering. We received approximately $78.3 million in net proceeds after deducting underwriting discounts, commissions and offering expenses.

We have incurred significant operating losses in every year since our inception in 2009 and have not generated any revenue. We expect to continue to incur significant expenses and operating losses for the foreseeable future. Our ability to generate product revenue sufficient to achieve profitability will depend on the successful development and commercialization of one or more of our product candidates. Our net losses were $26.3 million and $14.8 million for the six months ended June 30, 2022 and 2021, respectively. As of June 30, 2022, we had an accumulated deficit of $178.4 million. In addition, our losses from operations may fluctuate significantly from quarter-to-quarter and year-to-year, depending on the timing of our clinical trials and our expenditures on other research and development activities.

We anticipate that our expenses and capital requirements will increase substantially in connection with our ongoing activities, particularly as we advance the preclinical studies and clinical trials of our product candidates. In addition, we incur additional costs associated with operating as a public company. We expect that our expenses and capital requirements will increase substantially if and as we:

- conduct our current and future clinical trials of belzupacap sarotalocan;
- progress the preclinical and clinical development of new indications;
- establish our manufacturing capability, including developing our contract development and manufacturing relationships;
- seek to identify and develop additional product candidates;
- seek regulatory approval of our current and future product candidates;
- expand our operational, financial, and management systems and increase personnel, including personnel to support our preclinical and clinical development, manufacturing and commercialization efforts;
- maintain, expand and protect our intellectual property portfolio; and
- incur additional legal, accounting, or other expenses in operating our business, including the additional costs associated with operating as a public company.

As a result, we will need substantial additional funding to support our continuing operations and pursue our growth strategy. Until we can generate significant revenue from product sales, if ever, we expect to finance our operations through a combination of equity offerings, debt financings, collaborations or other strategic transactions. We may be unable to raise additional funds or enter into such other agreements or arrangements when needed on favorable terms, or at all. If we fail to raise capital or enter into such agreements as, and when, needed, we may have to significantly delay, scale back or discontinue the development and commercialization of one or more of our product candidates.

We will not generate revenue from product sales unless and until we successfully complete clinical development and obtain marketing approval for our product candidates. The lengthy process of securing marketing approvals for new drugs requires the expenditure of substantial resources. Any delay or failure to obtain regulatory approvals would materially adversely affect the development efforts of our product candidates and our business overall. Because of the numerous risks and uncertainties associated with product development, we are unable to predict the timing or amount of increased expenses or when or if we will be able to achieve or maintain profitability. Even if we are able to generate revenue from product sales, we may not become profitable. If we fail to become profitable or are unable to sustain profitability on a continuing basis, then we may be unable to continue our operations at planned levels and be forced to reduce or terminate our operations.

As of June 30, 2022, we had cash and cash equivalents and marketable securities of $122.1 million. We believe that our existing cash and cash equivalents and marketable securities will enable us to fund our operating expenses and capital expenditure requirements into 2024. We have based this estimate on assumptions that may prove to be wrong, and we could exhaust our available capital resources sooner than we expect. See “—Liquidity and Capital Resources” below.

Impact of the Ongoing COVID-19 Pandemic

The ongoing COVID-19 pandemic continues to present substantial public health and economic challenges around the world, and to date has led to the implementation of various responses, including government-imposed quarantines, stay-at-home orders, travel restrictions, mandated business closures and other public health safety measures.

We continue to closely monitor the impact of the COVID-19 pandemic on all aspects of our business, including how it has and will continue to impact our operations and the operations of our suppliers, vendors and business partners, and may take further precautionary and preemptive actions as may be required by federal, state or local authorities. In addition, we have taken steps to minimize the current environment’s impact on our business and strategy, including devising contingency plans and securing additional resources from third party service providers. For the safety of our employees and families, we have introduced enhanced safety measures for scientists to be present in our labs and increased the use of third party service providers for the conduct of certain experiments and studies for research programs. To date, we’ve only encountered minor delays in our manufacturing process due to a supply chain constraint with one of our vendors.

Beyond the impact on our pipeline, the extent to which COVID-19 ultimately impacts our business, results of operations and financial condition will depend on future developments, which remain highly uncertain and cannot be predicted with confidence, such as the duration of the outbreak, the emergence of new variants, new information that may emerge concerning the severity of COVID-19 or the effectiveness of actions taken to contain COVID-19 or treat its impact, including vaccination campaigns, among others. If we or any of the third parties with whom we engage, however, were to experience any additional shutdowns or other prolonged business disruptions, our ability to conduct our business in the manner and on the timelines presently planned could be materially or negatively affected, which could have a material adverse impact on our business, results of operations and financial condition. Although to date, our business has not been materially impacted by COVID-19, it is possible that our clinical development timelines could be negatively affected by COVID-19, which could materially and adversely affect our business, financial condition and results of operations. See Item 1A "Risk Factors" of this Quarterly Report on Form 10-Q for a discussion of the potential adverse impact of the COVID-19 pandemic on our business, financial condition and results of operations.

Components of Our Results of Operations

Revenue

Since inception, we have not generated any revenue and do not expect to generate any revenue from the sale of products in the foreseeable future. If our development efforts for one or more of our product candidates are successful and result in regulatory approval, or if we enter into collaboration or license agreements with third parties, we may generate revenue in the future from a combination of product sales or payments from collaboration or license agreements. We cannot predict if, and when, or to what extent, we will generate revenue from the commercialization and sale of our product candidates. We may never succeed in obtaining regulatory approval for any of our product candidates.

Operating Expenses

Research and Development Expenses

Research and development expenses consist primarily of costs incurred for our research activities, including our discovery efforts and the development of our belzupacap sarotalocan program, and include:

- employee-related expenses, including salaries, related-benefits and stock-based compensation expense for employees engaged in research and development functions;
- fees paid to consultants for services directly related to our product development and regulatory efforts;
- expenses associated with conducting preclinical studies performed by ourselves, outside vendors or academic collaborators;
- expenses incurred under agreements with contract research organizations, or CROs, as well as consultants that conduct and provide supplies for our preclinical studies and clinical trials;
- the cost of manufacturing belzupacap sarotalocan, including the potential cost of CMOs that manufacture product for use in our preclinical studies and clinical trials and perform analytical testing, scale-up and other services in connection with our development activities;
- costs associated with preclinical activities and development activities;
- costs associated with our intellectual property portfolio;
- costs related to compliance with regulatory requirements; and
- allocated expenses for utilities and other facility-related costs.

We expense research and development costs as incurred. Costs for external development activities are recognized based on an evaluation of the progress to completion of specific tasks using information provided to us by our vendors. Payments for these activities are based on the terms of the individual agreements, which may differ from the pattern of costs incurred, and are reflected in our financial statements as prepaid or accrued research and development expenses. We allocate our direct external research and development costs across the entire belzupacap sarotalocan program. Preclinical expenses consist of external research and development costs associated with activities to support our current and future clinical programs, but are not allocated by specific indications due to the overlap of the potential benefit of those efforts across the entire belzupacap sarotalocan program.

Research and development activities are central to our business. We expect that our research and development expenses will increase for the foreseeable future as we continue clinical development for belzupacap sarotalocan and continue to discover and develop additional product candidates. If any of our product candidates enter into later stages of clinical development, they will generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later-stage clinical trials.

General and Administrative Expenses

General and administrative expenses consist primarily of salaries and other related costs, including stock-based compensation, for personnel in our executive and finance functions. General and administrative expenses also include professional fees for legal, accounting, auditing, tax and consulting services; travel expenses; and facility-related expenses, which include allocated expenses for rent and maintenance of facilities and other operating costs not included in research and development.

We expect that our general and administrative expenses will increase in the near-term as we continue to build a team to support our administrative, accounting and finance, communications, legal and business development efforts. We expect to incur increased expenses associated with being a public company, including costs of accounting, audit, legal, regulatory and tax compliance services; director and officer insurance costs; and investor and public relations costs.

Other Income (Expense)

Our other income (expense) consists of changes in the fair value of our warrant liability, accretion and interest income on marketable securities, loss on disposal of fixed assets, and interest income on our invested cash balances.

Income Taxes

Since our inception, we have not recorded any U.S. federal or state income tax benefits for the net losses we have incurred in any year or for our earned research and development tax credits, due to the uncertainty of realizing a benefit from those items. As of December 31, 2021, we had federal gross operating loss carryforwards of approximately $138.7 million which may be available to offset future taxable income, of which $44.2 million begin to expire in 2029 and go through 2037 and $94.5 million do not expire. The state gross operating loss carryforwards of $113.6 million, which may be available to offset future taxable income and which would begin to expire in 2030. As of December 31, 2021, we had federal and state research and experimentation credit carryforwards of $4.7 million and $1.4 million, respectively, which may be available to offset future income tax liabilities and which would begin to expire in 2029 and 2028, respectively. Due to the degree of uncertainty related to the ultimate use of the deferred tax assets, we have fully reserved these tax benefits, as the determination of the realization of the deferred tax benefits was not determined to be more likely than not.

Results of Operations

Comparison of the Three Months Ended June 30, 2022 and 2021

The following table summarizes our results of operations for the three months ended June 30, 2022 and 2021:

	Three Months Ended June 30,		
	2022	2021	Change
	(in thousands)		
Operating expenses:			
Research and development	$ 9,510	$ 6,632	$ 2,878
General and administrative	4,306	2,169	2,137
Total operating expenses	13,816	8,801	5,015
Loss from operations	(13,816)	(8,801)	(5,015)
Other income (expense):			
Change in fair value of warrant liability	61	(3)	64
Change in fair value of derivative liability	—	(52)	52
Interest income, including amortization of discount	292	4	288
Other expense	(5)	—	(5)
Total other income (expense)	348	(51)	399
Net loss	$ (13,468)	$ (8,852)	$ (4,616)
Other comprehensive items:			
Unrealized loss on marketable securities	(123)	—	(123)
Total other comprehensive loss	(123)	—	(123)
Net loss and comprehensive loss	$ (13,591)	$ (8,852)	$ (4,739)

Research and Development Expenses

The following table summarizes our research and development expenses for the three months ended June 30, 2022 and 2021:

	Three Months Ended June 30,		
	2022	2021	Change
	(in thousands)		
Preclinical	$ 472	$ 194	$ 278
Clinical trials	1,115	741	374
Manufacturing development	2,416	2,885	(469)
Personnel/overhead expenses	5,507	2,812	2,695
Total research and development expenses	$ 9,510	$ 6,632	$ 2,878

Research and development expenses increased to $9.5 million for the three months ended June 30, 2022 from $6.6 million for the three months ended June 30, 2021, primarily due to ongoing preclinical costs, clinical costs for belzupacap sarotalocan, and higher personnel expenses from growing headcount.

General and Administrative Expenses

General and administrative expenses increased to $4.3 million for the three months ended June 30, 2022 from $2.2 million for the three months ended June 30, 2021, primarily driven by personnel expenses, as well as increases in general corporate expenses related to operating as a public company.

Comparison of the Six Months Ended June 30, 2022 and 2021

The following table summarizes our results of operations for the six months ended June 30, 2022 and 2021:

	Six Months Ended June 30,		
	2022	2021	Change
	(in thousands)		
Operating expenses:			
Research and development	$ 17,786	$ 10,817	$ 6,969
General and administrative	8,841	3,911	4,930
Total operating expenses	26,627	14,728	11,899
Loss from operations	(26,627)	(14,728)	(11,899)
Other income (expense):			
Change in fair value of warrant liability	16	1	15
Change in fair value of derivative liability	—	(52)	52
Interest income, including amortization of discount	319	3	316
Other expense	(11)	(3)	(8)
Total other income (expense)	324	(51)	375
Net loss	$ (26,303)	$ (14,779)	$ (11,524)
Other comprehensive items:			
Unrealized loss on marketable securities	(128)	—	(128)
Total other comprehensive loss	(128)	—	(128)
Net loss and comprehensive loss	$ (26,431)	$ (14,779)	$ (11,652)

Research and Development Expenses

The following table summarizes our research and development expenses for the six months ended June 30, 2022 and 2021:

	Six Months Ended June 30,		
	2022	2021	Change
	(in thousands)		
Preclinical	$ 777	$ 270	$ 507
Clinical trials	2,311	1,491	820
Manufacturing development	4,204	4,211	(7)
Personnel/overhead expenses	10,494	4,845	5,649
Total research and development expenses	$ 17,786	$ 10,817	$ 6,969

Research and development expenses increased to $17.8 million for the six months ended June 30, 2022 from $10.8 million for the six months ended June 30, 2021, primarily due to ongoing preclinical costs, clinical costs for belzupacap sarotalocan, and higher personnel expenses from growing headcount.

General and Administrative Expenses

General and administrative expenses increased to $8.8 million for the six months ended June 30, 2022 from $3.9 million for the six months ended June 30, 2021, primarily driven by personnel expenses, as well as increases in general corporate expenses related to operating as a public company.

Liquidity and Capital Resources

To date we have funded our operations primarily through the sale of convertible preferred stock, and common stock. Through June 30, 2022, we have raised an aggregate of approximately $218.9 million of gross proceeds primarily from private placements of our equity and convertible preferred stock and warrants, as well as through the issuance of our common stock. In November 2021, we issued and sold a total of 6,210,000 shares in our IPO of our common stock, including the full exercise of the underwriters' option to purchase additional shares, at a price to the public of $14.00 per share for aggregate gross proceeds of $86.9 million. We received approximately $78.3 million in net proceeds after deducting underwriting discounts, commissions and offering expenses.

Cash Flows

The following table summarizes our cash flows for each of the periods presented:

	Six Months Ended June 30,	
	2022	2021
	(in thousands)	
Net cash used in operating activities	$ (25,828)	$ (11,634)
Net cash used in investing activities	(68,939)	(733)
Net cash provided by financing activities	326	87,233
Net (decrease) increase in cash, cash equivalents, and restricted cash	$ (94,441)	$ 74,866

Operating Activities

During the six months ended June 30, 2022, net cash used in operating activities was $25.8 million, primarily due to our net loss of $26.3 million and decrease in accounts payable related to the timing of vendor invoicing and payments, partially offset by the non-cash charge related to stock compensation expense.

During the six months ended June 30, 2021, net cash used in operating activities was $11.6 million, primarily due to our net loss of $14.8 million offset by an increase in accounts payable related to the timing of vendor invoicing and payments, partially offset by the non-cash charge related to stock compensation expense.

Investing Activities

Net cash used in investing activities during the six months ended June 30, 2022 was $68.9 million due to purchases of marketable securities and purchases of property and equipment offset by maturities of marketable securities.

Net cash used in investing activities during the six months ended June 30, 2021 was $0.7 million due to purchases of property and equipment.

Financing Activities

During the six months ended June 30, 2022, net cash provided by financing activities was $0.3 million from proceeds from stock options exercises.

During the six months ended June 30, 2021, net cash provided by financing activities was $87.2 million from the net proceeds from the sale of the second tranche of the Series D-2 preferred stock, net proceeds from the sale of Series E preferred stock, and proceeds from stock option exercises offset by deferred offering cost payments.

Funding Requirements

Our plan of operation is to continue implementing our business strategy, continue research and development of belzupacap sarotalocan and any other product candidates we may acquire or develop and continue to expand our research pipeline and our internal research and development capabilities. We expect our expenses to increase substantially in connection with our ongoing activities, particularly as we advance the preclinical activities and clinical trials of our current and future product candidates. In addition, we expect to incur additional costs associated with operating as a public company. Accordingly, we will need to obtain substantial additional funding in connection with our continuing operations. If we are unable to raise capital when needed or on attractive terms, we would be forced to delay, reduce or terminate our research and development programs or future commercialization efforts. Our future capital requirements will depend on many factors, including:

- the scope, timing, progress, costs, and results of discovery, preclinical development, and clinical trials for our current and future product candidates;
- the number of clinical trials required for regulatory approval of our current and future product candidates;
- the costs, timing, and outcome of regulatory review of any of our current and future product candidates;
- the cost of manufacturing clinical and commercial supplies of our current and future product candidates;
- the costs and timing of future commercialization activities, including manufacturing, marketing, sales, and distribution, for any of our product candidates for which we receive marketing approval;
- the costs and timing of preparing, filing, and prosecuting patent applications, maintaining and enforcing our intellectual property rights, and defending any intellectual property-related claims, including any claims by third parties that we are infringing upon their intellectual property rights;
- our ability to maintain existing, and establish new, strategic collaborations, licensing, or other arrangements and the financial terms of any such agreements, including the timing and amount of any future milestone, royalty, or other payments due under any such agreement;
- the revenue, if any, received from commercial sales of our product candidates for which we receive marketing approval;
- expenses to attract, hire and retain, skilled personnel;
- the costs of operating as a public company;
- our ability to establish a commercially viable pricing structure and obtain approval for coverage and adequate reimbursement from third-party and government payers;
- addressing any potential interruptions or delays resulting from factors related to the ongoing COVID-19 pandemic;
- the effect of competing technological and market developments; and
- the extent to which we acquire or invest in businesses, products, and technologies.

A change in the outcome of any of these variables with respect to the development of a product candidate could mean a significant change in the costs and timing associated with the development of that product candidate. As of June 30, 2022, we had cash and cash equivalents and marketable securities of $122.1 million. Based on our research and development plans, we believe that our existing cash and cash equivalents, will be sufficient to fund our operations into 2024. We have based this estimate on assumptions that may prove to be wrong, and we could exhaust our available capital resources sooner than we expect.

Until such time as we can generate significant revenue from product sales, if ever, we expect to finance our operations from the sale of additional equity or debt financings, or other capital which comes in the form of strategic collaborations, licensing, or other arrangements. In the event that additional financing is required, we may not be able to raise it on terms acceptable to us, or at all. If we raise additional funds through the issuance of equity or convertible preferred stock, it may result in dilution to our existing stockholders. Debt financing or preferred equity financing, if available, may result in increased fixed payment obligations, and the existence of securities with rights that may be senior to those of our common stock. If we incur indebtedness, we could become subject to covenants that would restrict our operations.

If we raise funds through strategic collaboration, licensing or other arrangements, we may relinquish significant rights or grant licenses on terms that are not favorable to us. Our ability to raise additional funds may be adversely impacted by potential worsening global economic conditions and the recent disruptions to, and volatility in, the credit and financial markets in the United States and worldwide resulting from the ongoing COVID-19 pandemic and otherwise. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market products or product candidates that we would otherwise prefer to develop and market ourselves.

Material Cash Requirements

The following table summarizes our contractual obligations and commitments as of June 30, 2022.

		Payments Due by Period			
	Total	Less than 1 Year	1 to 3 Years	3 to 5 Years	More than 5 Years
			(in thousands)		
Operating lease commitments(1)	$ 696	$ 643	$ 53	$ —	$ —
Total	$ 696	$ 643	$ 53	$ —	$ —

(1) Amounts in the table above reflect payments due for our lease of office space in Cambridge, Massachusetts, that expires in July 2023.

On May 16, 2022, the Company entered into an office and laboratory lease in Boston, MA, with estimated payments due under the initial term total $35.2 million. Payments began on the lease commencement date of August 1, 2022.

Except as disclosed in the table above, we have no long-term debt or finance leases and no material non-cancelable purchase commitments with service providers, as we have generally contracted on a cancelable, purchase-order basis. We enter into contracts in the normal course of business with equipment and reagent vendors, CROs, CMOs and other third parties for clinical trials, preclinical research studies and testing and manufacturing services. These contracts are cancelable by us upon prior notice. Payments due upon cancellation consist only of payments for services provided or expenses incurred, including noncancelable obligations of our service providers, up to the date of cancellation. These payments are not included in the preceding table as the amount and timing of such payments are not known.

There were no material changes to our contractual obligations and commitments during the six months ended June 30, 2022, from those described under “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in the Annual Report on the Form 10-K.

Critical Accounting Policies and Significant Judgments and Estimates

Our management’s discussion and analysis of financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or U.S. GAAP. The preparation of our condensed consolidated financial statements and related disclosures requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, costs and expenses and the disclosure of contingent assets and liabilities in our condensed consolidated financial statements. We base our estimates on historical experience, known trends and events and various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. We evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates under different assumptions or conditions. During the six months ended June 30, 2022, there were no material changes to our critical accounting policies from those described in the section titled “Management’s Discussion and Analysis of Financial Condition and Operations” included in our Annual Report on Form 10-K for the year ended December 31, 2021, as filed with the SEC.

Recent Accounting Pronouncements

We assessed the recent accounting pronouncements for the six months ended June 30, 2022 and determined no pronouncements have material impact to the condensed consolidated financial statements.

Emerging Growth Company Status

The Jumpstart Our Business Startups Act of 2012, or the JOBS Act, permits that an "emerging growth company" may take advantage of the extended transition period to comply with new or revised accounting standards applicable to public companies until those standards would otherwise apply to private companies. We have elected to use the extended transition period under the JOBS Act. Accordingly, our consolidated financial statements may not be comparable to the financial statements of public companies that comply with such new or revised accounting standards. The JOBS Act also exempts us from having to provide an auditor attestation of internal control over financial reporting under Sarbanes-Oxley Act Section 404(b).

We will remain an "emerging growth company" until the earliest of: the last day of the fiscal year in which we have more than $1.07 billion in annual revenue; the date we qualify as a "large accelerated filer," with at least $700.0 million of equity securities held by non-affiliates; the issuance, in any three-year period, by us of more than $1.0 billion in non-convertible debt securities; or the last day of the fiscal year ending after the fifth anniversary of our IPO.

We are also a "smaller reporting company," meaning that the market value of our stock held by non-affiliates is less than $700 million and our annual revenue was less than $100 million during the most recently completed fiscal year. We may continue to be a smaller reporting company if either (i) the market value of our stock held by non-affiliates is less than $250 million or (ii) our annual revenue is less than $100 million during the most recently completed fiscal year and the market value of our stock held by non-affiliates is less than $700 million.

If we are a smaller reporting company at the time we cease to be an EGC, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act of 1934 and are not required to provide the information under this item.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is (1) recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms and (2) accumulated and communicated to our management, including our principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this Quarterly Report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that as of June 30, 2022, our disclosure controls and procedures were effective to provide reasonable assurance that the information required to be disclosed by us in this Quarterly Report was (a) reported within the time periods specified by the SEC rules and regulations, and (b) communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding any required disclosure.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, we may become subject to various legal proceedings and claims that arise in the ordinary course of our business activities. Although the results of litigation and claims cannot be predicted with certainty, as of June 30, 2022, we do not believe we are party to any claim or litigation the outcome of which, if determined adversely to us, would individually or in the aggregate be reasonably expected to have a material adverse effect on our business. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

Item 1A. Risk Factors.

Investing in our common stock involves a high degree of risk. You should carefully read and consider all of the risks described below, as well as the other information in this Quarterly Report on Form 10-Q, including our condensed consolidated financial statements and related notes thereto and the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations". The occurrence of any of the events or developments described below could harm our business, financial condition, results of operations and growth prospects. Unless otherwise indicated, references to our business being harmed in these risk factors will include harm to our business, reputation, financial condition, results of operations and future prospects. In such an event, the market price of our common stock could decline, and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations and the market price of our common stock.

Risks Related to Our Financial Position, and Additional Capital Needs

We have incurred significant net losses since our inception and anticipate that we will continue to incur losses for the foreseeable future.

Investment in biotechnology product development is highly speculative because it entails substantial upfront capital expenditures and significant risk that a product candidate will fail to gain regulatory approval or fail to become commercially viable. Our net losses were $26.3 million and $14.8 million for the six months ended June 30, 2022 and 2021, respectively. As of June 30, 2022, we had an accumulated deficit of $178.4 million. Substantially all of our net losses have resulted from costs incurred in connection with our research and development programs and from general and administrative costs associated with our operations. We expect our research and development expenses to increase significantly as we continue clinical development for belzupacap sarotalocan and continue to discover and develop additional product candidates. In addition, if we obtain regulatory approval for our product candidates, we will incur significant sales, marketing and manufacturing expenses. We will incur additional costs associated with operating as a public company. As a result, we expect to continue to incur significant and increasing operating losses for the foreseeable future. Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the extent of any future losses or when we will become profitable, if at all. We have no products approved for commercial sale and therefore have never generated any revenue from product sales, and we do not expect to in the foreseeable future. Even if we do become profitable, we may not be able to sustain or increase our profitability on a quarterly or annual basis.

Our ability to become profitable depends upon our ability to generate revenue. To date, we have not generated any revenue from any product sales. We have no products approved for commercial sale, and do not anticipate generating any revenue from product sales until after we have received marketing approval for the commercial sale of a product candidate, if ever. Our ability to generate revenue and achieve profitability depends significantly on our success in achieving a number of goals, including:

- initiating and completing research regarding, and preclinical and clinical development of, belzupacap sarotalocan in primary choroidal melanoma and, additional oncology indications, including NMIBC, other research programs from our VDC technology platform and any future product candidates;
- obtaining marketing approval for belzupacap sarotalocan and any future product candidates for which we complete clinical trials;
- transferring our manufacturing process to a commercial contract development and manufacturing organization for belzupacap sarotalocan and any future product candidates, including establishing and maintaining commercially viable supply and manufacturing relationships with third parties;
- launching and commercializing belzupacap sarotalocan and any future product candidates for which we obtain marketing approvals, either directly or with a collaborator or distributor;
- obtaining market acceptance of belzupacap sarotalocan and any future product candidates as viable treatment options;
- addressing any competing technological and market developments;

- identifying, assessing, acquiring and developing new product candidates from our VDC technology platform;
- negotiating favorable terms in any collaboration, licensing, or other arrangements into which we may enter;
- obtaining, maintaining, protecting, and expanding our portfolio of intellectual property rights, including patents, trade secrets, and know-how; and
- attracting, hiring, and retaining qualified personnel.

Even if belzupacap sarotalocan or any future product candidates that we develop are approved for commercial sale, we anticipate incurring significant costs associated with commercializing any such product candidate. Our expenses could increase beyond expectations if we are required by the FDA or comparable foreign regulatory authorities to change our manufacturing processes or assays, or to perform clinical, nonclinical, or other types of studies in addition to those that we currently anticipate.

If we are successful in obtaining regulatory approvals to market belzupacap sarotalocan or any future product candidates, our revenue will be dependent, in part, upon the size of the markets in the territories for which we gain marketing approval, the accepted price for the product, the ability to get reimbursement at any price, and whether we own the commercial rights for that territory. If the number of our addressable patients is not as significant as we estimate, the indication approved by regulatory authorities is narrower than we expect, the labels for belzupacap sarotalocan and any future product candidates contain significant safety warnings, regulatory authorities impose burdensome or restrictive distribution requirements, or the reasonably accepted patient population for treatment is narrowed by competition, physician choice or treatment guidelines, we may not generate significant revenue from sales of such products, even if approved. If we are not able to generate revenue from the sale of any approved products, we could be prevented from or significantly delayed in achieving profitability.

Even if we achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would depress the value of our company and could impair our ability to raise capital, expand our business, maintain our development efforts, obtain product approvals, diversify our offerings or continue our operations. A decline in the value of our company could also cause you to lose all or part of your investment.

We will require substantial additional capital to finance our operations. If we are unable to raise such capital when needed, or on acceptable terms, we may be forced to delay, reduce or terminate one or more of our research and development programs, future commercialization efforts, product development or other operations.

Since our inception, we have used substantial amounts of cash to fund our operations, and our expenses will increase substantially in the foreseeable future in connection with our ongoing activities, particularly as we continue the research and development of, initiate and complete clinical trials of, and seek marketing approval for belzupacap sarotalocan. Identifying and developing pharmaceutical products, including conducting preclinical studies and clinical trials, is a very time-consuming, expensive and uncertain process that takes years to complete. Even if one or more of belzupacap sarotalocan or any future product candidates that we develop is approved for commercial sale, we anticipate incurring significant costs associated with sales, marketing, manufacturing and distribution activities. Our expenses could increase beyond expectations if we are required by the FDA, the EMA, or other regulatory agencies to perform clinical trials or preclinical studies in addition to those that we are currently conducting or anticipate. Other unanticipated costs may also arise. Because the design and outcome of our current and planned clinical trials are highly uncertain, we cannot reasonably estimate the actual amount of resources and funding that will be necessary to successfully complete the development and commercialization of belzupacap sarotalocan or any future product candidates that we develop. We also expect to incur additional costs associated with operating as a public company. Accordingly, we will need to obtain substantial additional funding in order to continue our operations.

Based on our current operating plan, we believe that our existing cash and cash equivalents, will be sufficient to fund our operating expenses and capital expenditures into 2024. Advancing the development of belzupacap sarotalocan and other research programs will require a significant amount of capital. Our existing cash and cash equivalents will not be sufficient to fund belzupacap sarotalocan through regulatory approval, and we anticipate needing to raise additional capital to complete the development of and commercialize belzupacap sarotalocan. Our estimate as to how long we expect our existing cash and cash equivalents to fund our operations is based on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we currently expect. Changing circumstances, some of which may be beyond our control, could cause us to consume capital significantly faster than we currently anticipate, and we may need to seek additional funds sooner than planned.

We will be required to obtain further funding through public or private equity financings, debt financings, collaborative agreements, licensing arrangements or other sources of financing, which may dilute our stockholders or restrict our operating activities. We do not have any committed external source of funds. Adequate additional financing may not be available to us on acceptable terms, or at all. Any additional fundraising efforts may divert our management from their day-to-day activities, which may adversely affect our ability to develop and commercialize product candidates. Disruptions in financial markets due to the ongoing COVID-19 pandemic or more recently due to unfavorable global economic conditions and inflationary pressures may make equity and debt financings more difficult to obtain and may have a material adverse effect on our ability to meet our fundraising needs. To the extent that we raise additional capital through the sale of equity or convertible preferred stock, each investor's ownership interests will be diluted, and the terms may include liquidation or other preferences that adversely affect each investor's rights as a stockholder. Debt financing may result in imposition of debt covenants, increased fixed payment obligations or other restrictions that may affect our business. If we raise additional funds through upfront payments or milestone payments pursuant to strategic collaborations with third parties, we may have to relinquish valuable rights to our product candidates or grant licenses on terms that are not favorable to us. In addition, we may seek additional capital due to favorable market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. Attempting to secure additional financing may divert our management from our day-to-day activities, which may adversely affect our ability to commercialize belzupacap sarotalocan if and when approved and develop our product candidates.

Our failure to raise capital as and when needed or on acceptable terms would have a negative impact on our financial condition and our ability to pursue our business strategy, and we may have to delay, reduce the scope of, suspend or eliminate one or more of our clinical trials, research and development programs, future commercialization efforts or other operations.

Recent volatility in capital markets may affect our ability to access new capital through sales of shares of our common stock or issuance of indebtedness.

Our operations consume substantial amounts of cash, and we intend to continue to make significant investments to support our business growth, respond to business challenges or opportunities, develop new solutions, retain or expand our current levels of personnel, improve our existing solutions, enhance our operating infrastructure, and potentially acquire complementary businesses and technologies. Our future capital requirements may be significantly different from our current estimates and will depend on many factors, including the need to:

- finance unanticipated working capital requirements;
- develop or enhance our technological infrastructure and our existing solutions;;
- pursue acquisitions or other strategic relationships; and
- respond to competitive pressures.

Accordingly, we may need to pursue equity or debt financings to meet our capital needs. With uncertainty in the capital markets and other factors, such financing may not be available on terms favorable to us or at all. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences, and privileges superior to those of holders of our common stock. Any debt financing secured by us in the future could involve additional restrictive covenants relating to our capital-raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. If we are unable to obtain adequate financing or financing on terms satisfactory to us, we could face significant limitations on our ability to invest in our operations and otherwise suffer harm to our businesses.

Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish proprietary rights to our technologies or product candidates.

We do not have any committed external source of funds or other support for our development efforts and we cannot be certain that additional funding will be available on acceptable terms, or at all. Until we can generate sufficient product or royalty revenue to finance our cash requirements, which we may never do, we expect to finance our future cash needs through a combination of public or private equity offerings, debt financings, collaborations, strategic alliances, licensing arrangements and other marketing or distribution arrangements. If we raise additional funds through public or private equity offerings, the terms of these securities may include liquidation or other preferences that adversely affect our stockholders' rights. Further, to the extent that we raise additional capital through the sale of common stock or securities convertible or exchangeable into common stock, existing stockholder ownership interest will be diluted. In addition, any debt financing may subject us to fixed payment obligations and covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. Such restrictions could adversely impact our ability to conduct our operations and execute our business plan.

If we raise additional capital through marketing and distribution arrangements or other collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish certain valuable rights to our product candidates, technologies, future revenue streams or research programs or grant licenses on terms that may not be favorable to us. We also could be required to seek commercial or development partners for our lead products or any future product candidate at an earlier stage than otherwise would be desirable or relinquish our rights to product candidates or technologies that we otherwise would seek to develop or commercialize ourselves.

Our ability to generate revenue and achieve profitability depends significantly on our ability to achieve our objectives relating to the discovery, development and commercialization of our product candidates.

We rely on our team's expertise in drug discovery, translational research and patient-driven precision medicine to develop our product candidates. Our business depends significantly on the success of this engine and the development and commercialization of the product candidates that we discover with this engine. We have no products approved for commercial sale and do not anticipate generating any revenue from product sales in the near term, if ever. Our ability to generate revenue and achieve profitability depends significantly on our ability to achieve several objectives, including:

- successful and timely completion of preclinical and clinical development of belzupacap sarotalocan in indeterminate lesions and primary choroidal melanoma and additional oncology indications, other research programs from our VDC technology platform, and any other future programs;
- establishing and maintaining relationships with contract research organizations, or CROs, and clinical sites for the clinical development of belzupacap sarotalocan, other research programs from our VDC technology platform, and any other future programs;
- timely receipt of marketing approvals from applicable regulatory authorities for any product candidates for which we successfully complete clinical development;
- transferring our manufacturing process to a commercial CDMO, including obtaining finished products that are appropriately packaged for sale;
- establishing and maintaining commercially viable supply and manufacturing relationships with third parties that can provide adequate, in both amount and quality, products and services to support clinical development and meet the market demand for our product candidates, if approved;
- successful commercial launch following any marketing approval, including the development of a commercial infrastructure, whether in-house or with one or more collaborators;
- a continued acceptable safety profile following any marketing approval of our product candidates;
- commercial acceptance of our product candidates by patients, the medical community and third-party payors;
- satisfying any required post-marketing approval commitments to applicable regulatory authorities;
- identifying, assessing and developing new product candidates from our VDC technology platform;
- obtaining, maintaining and expanding patent protection, trade secret protection and regulatory exclusivity, both in the United States and internationally;
- defending against third-party interference or infringement claims, if any;
- entering into, on favorable terms, any collaboration, licensing or other arrangements that may be necessary or desirable to develop, manufacture or commercialize our product candidates;
- obtaining coverage and adequate reimbursement by third-party payors for our product candidates;
- addressing any competing therapies and technological and market developments; and
- attracting, hiring and retaining qualified personnel.

We may never be successful in achieving our objectives and, even if we do, may never generate revenue that is significant or large enough to achieve profitability. If we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would decrease the value of our company and could impair our ability to maintain or further our research and development efforts, raise additional necessary capital, grow our business and continue our operations.

Risks Related to the Discovery and Development of our Product Candidates

We are heavily dependent on the success of belzupacap sarotalocan, our only product candidate to date.

We currently have no products that are approved for commercial sale and may never be able to develop marketable products. We expect that a substantial portion of our efforts and expenditures over the next several years will be devoted to development of belzupacap sarotalocan in multiple oncology indications, which is currently our only product candidate. Accordingly, our business currently depends heavily on the successful development, regulatory approval, and commercialization of belzupacap sarotalocan. We can provide no assurance that belzupacap sarotalocan will receive regulatory approval or be successfully commercialized even if we receive regulatory approval. If we were required to discontinue development of belzupacap sarotalocan or if belzupacap sarotalocan does not receive regulatory approval or fails to achieve significant market acceptance, we would be delayed by many years in our ability to achieve profitability, if ever.

The research, testing, manufacturing, safety, efficacy, recordkeeping, labeling, approval, licensure, sale, marketing, advertising, promotion and distribution of belzupacap sarotalocan is, and will remain, subject to comprehensive regulation by the FDA and foreign regulatory authorities. Failure to obtain regulatory approval for belzupacap sarotalocan in the United States, Europe and other major markets around the world will prevent us from commercializing and marketing belzupacap sarotalocan in such jurisdictions.

Even if we were to successfully obtain approval from the FDA and foreign regulatory authorities for belzupacap sarotalocan, any approval might contain significant limitations related to use, including limitations on the stage or type of cancer belzupacap sarotalocan is approved to treat, as well as restrictions for specified age groups, warnings, precautions or contraindications, or requirement for a risk evaluation and mitigation strategy, or REMS. Any such limitations or restrictions could similarly impact any supplemental marketing approvals we may obtain for belzupacap sarotalocan. Furthermore, even if we obtain regulatory approval for belzupacap sarotalocan, we will still need to develop a commercial infrastructure or develop relationships with collaborators to commercialize, establish a commercially viable pricing structure and obtain coverage and adequate reimbursement from third-party payors, including government healthcare programs. If we, or any future collaborators, are unable to successfully commercialize belzupacap sarotalocan, we may not be able to generate sufficient revenue to continue our business.

If we are not able to obtain, or if there are delays in obtaining, required regulatory approvals for belzupacap sarotalocan, we will not be able to commercialize, or will be delayed in commercializing, our product candidates, and our ability to generate revenue will be materially impaired.

Our product candidates and the activities associated with their development and commercialization, including their design, testing, manufacture, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale, distribution, import and export are subject to comprehensive regulation by the FDA and other regulatory agencies in the United States and by comparable authorities in other countries. Before we can commercialize any of our product candidates, we must obtain marketing approval. We have not received approval to market any of our product candidates from regulatory authorities in any jurisdiction and it is possible that none of our product candidates or any product candidates we may seek to develop in the future will ever obtain regulatory approval. We utilize third-party CROs and/or regulatory consultants to assist us in the regulatory approval process globally and expect to continue to do so in the future. Securing regulatory approval requires the submission of extensive preclinical and clinical data and supporting information to the various regulatory authorities for each therapeutic indication to establish the drug candidate’s safety and efficacy. Securing regulatory approval also requires the submission of information about the drug manufacturing process to, and inspection of manufacturing facilities and clinical sites by the relevant regulatory authority. Our product candidates may not be effective, may be only moderately effective or may prove to have undesirable or unintended side effects, toxicities or other characteristics that may preclude our obtaining marketing approval or prevent or limit commercial use.

The process of obtaining regulatory approvals, both in the United States and abroad, is expensive, may take many years if additional clinical trials are required, if approval is obtained at all, and can vary substantially based upon a variety of factors, including the type, complexity and novelty of the product candidates involved. Changes in marketing approval policies during the development period, changes in or the enactment of additional statutes or regulations, or changes in regulatory review for each submitted Investigational New Drug application, or IND, Premarket Approval, or PMA, biologics license application, or BLA, or equivalent application types, may cause delays in the approval or rejection of an application. The FDA and comparable authorities in other countries have substantial discretion in the approval process and may refuse to accept any application or may decide that our data are insufficient for approval and require additional preclinical, clinical or other studies. Because the activity of belzupacap sarotalocan in ocular melanoma requires a drug delivery device and activation by a laser, the regulatory complexity of the product candidate is greater than for products that don't utilize a device, which creates uncertainties in the requirements for regulatory approval. Our product candidates could be delayed in receiving, or fail to receive, regulatory approval for many reasons, including the following:

- the FDA or comparable foreign regulatory authorities may disagree with the design or implementation of our clinical trials;
- we may be unable to demonstrate to the satisfaction of the FDA or comparable foreign regulatory authorities that a product candidate is safe and effective for its proposed indication;
- the results of clinical trials may not meet the level of statistical significance required by the FDA or comparable foreign regulatory authorities for approval;
- we may be unable to demonstrate that a product candidate's clinical and other benefits outweigh its safety risks;
- the FDA or comparable foreign regulatory authorities may disagree with our interpretation of data from preclinical studies or clinical trials;
- the data collected from clinical trials of our product candidates may not be sufficient to support the submission of an BLA or other submission or to obtain regulatory approval in the United States or elsewhere;
- the FDA or comparable foreign regulatory authorities may fail to approve our manufacturing processes or facilities or those of third-party manufacturers with which we contract for clinical and commercial supplies; and
- the approval policies or regulations of the FDA or comparable foreign regulatory authorities may significantly change in a manner rendering our clinical data insufficient for approval.

Of the large number of drugs in development, only a small percentage successfully complete the FDA or foreign regulatory approval processes and are commercialized. The lengthy approval process, as well as the unpredictability of future clinical trial results may result in our failing to obtain regulatory approval to market our product candidates, which would significantly harm our business, results of operations and prospects.

Our VDC product candidates are based on a technology that we are in the process of developing. We expect the novel nature of such product candidates to create further challenges in obtaining regulatory approval. As a result, our ability to develop product candidates and obtain regulatory approval may be significantly impacted.

The FDA may also require a panel of experts, referred to as an Advisory Committee, to deliberate on the adequacy of the safety and efficacy data to support approval. The opinion of the Advisory Committee, although not binding, may have a significant impact on our ability to obtain approval of any product candidates that we develop based on the completed clinical trials. Additionally, due to the ongoing COVID-19 pandemic, the conduct of Advisory Committee meetings may be disrupted or delayed and the impact that may have on the overall timing of regulatory approvals is uncertain.

In addition, even if we were to obtain approval, regulatory authorities may approve any of our product candidates for fewer or more limited indications than we request, may not approve the price we intend to charge for our products, may grant approval contingent on the performance of costly post-marketing clinical trials, or may approve a product candidate with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that product candidate. Any of the foregoing scenarios could materially harm the commercial prospects for our product candidates.

If we experience delays in obtaining approval or if we fail to obtain approval of our product candidates, the commercial prospects for our product candidates may be harmed and our ability to generate revenues will be materially impaired.

We have not yet successfully initiated or completed any pivotal clinical trials nor commercialized any pharmaceutical products, which may make it difficult to evaluate our future prospects.

We will need to successfully complete pivotal clinical trials in order to obtain the approval of the FDA, the European Medicines Agency (EMA), or other regulatory agencies to market belzupacap sarotalocan or any future product candidate. Carrying out later-stage clinical trials is a complicated process. Our operations to date have been limited to financing and staffing our company, developing our technology and conducting preclinical research and Phase 1 and Phase 2 clinical trials for our product candidates, primarily related to our belzupacap sarotalocan program in indeterminate lesions and primary choroidal melanoma. We have not yet demonstrated an ability to successfully initiate or complete pivotal clinical trials, obtain marketing approvals, manufacture a commercial-scale product or arrange for a third party to do so on our behalf, or conduct sales and marketing activities necessary for successful product commercialization. In order to complete later stage or pivotal trials, we will need to expand our clinical operations, CMC and regulatory capabilities, and we may be unable to recruit and train qualified personnel or sign a contract with a global clinical research organization to conduct the trials on our behalf. Consequently, we may be unable to successfully and efficiently execute and complete necessary clinical trials in a way that leads to approval of belzupacap sarotalocan or future product candidates. Consequently, we may be unable to successfully and efficiently execute and complete necessary clinical trials in a way that leads to approval of belzupacap sarotalocan or future product candidates. We may require more time to enroll patients and incur greater costs than our competitors and may not succeed in obtaining global regulatory approvals of product candidates that we develop. Furthermore, we may conduct our first pivotal trial based on an adaptive design, which could increase the time spent on or costs associated with this trial. We are in the process of transferring our intended commercial manufacturing process to our intended external contract development and manufacturing organization, or CDMO, commercial manufacturing site. During this transfer process, some modifications may be needed to ensure manufacturability and ability to scale-up the process to commercial batch sizes. We intend to perform an analytical comparability assessment between the current clinical process and the intended commercial process, however, if this analytical process comparability assessment is unsuccessful, clinical comparability may be required, which may result in delayed regulatory approval. We do not anticipate a change in formulation. However, failure to commence or complete, or delays in, our planned clinical trials, could prevent us from or delay us in commercializing our product candidates. Accordingly, you should consider our prospects in light of the costs, uncertainties, delays and difficulties frequently encountered by clinical-stage biopharmaceutical companies such as ours. Any predictions made about our future success or viability may not be as accurate as they could be if we had a longer operating history or a history of successfully developing and commercializing pharmaceutical products.

If we fail to develop additional product candidates, our commercial opportunity could be limited.

We expect to focus our resources on the development of belzupacap sarotalocan in the near term. Developing, obtaining marketing approval for, and commercializing any future product candidates will require substantial additional funding and will be subject to the risks of failure inherent in drug product development. We cannot assure you that we will be able to successfully advance any future product candidates through the development process.

Even if we obtain approval from the FDA or comparable foreign regulatory authorities to market any future product candidates for any indication, we cannot assure you that any such product candidates will be successfully commercialized, widely accepted in the marketplace, or more effective than other commercially available alternatives. If we are unable to successfully develop and commercialize additional product candidates, our commercial opportunity may be limited and our business, financial condition, results of operations, stock price and prospects may be materially harmed.

Belzupacap sarotalocan is a biologic that requires the use of multiple devices, which may result in additional regulatory risks.

Belzupacap sarotalocan is a novel biologic for which the intended use requires activation by a laser, which is regulated as a medical device. We plan to file a single BLA for the review and approval of this combination in our initial target indication of indeterminate lesions and small choroidal melanoma, but subsequent indications and delivery systems may require different or additional applications for marketing authorization. In addition, consistent with recent FDA guidance as seen with the approval of Xipere, Clearside Biomedical's SCS Microinjector® is also expected to be regulated as a medical device and suprachoroidal administration of belzupacap sarotalocan with this device is expected to constitute a combination product. As such, we may also include the SCS Microinjector in our BLA. There may be additional regulatory risks for biologic-device combination products. We may experience delays in obtaining regulatory approval of belzupacap sarotalocan given the increased complexity of the review process when approval of the product and a delivery device is sought under a single marketing application. In the United States, each component of a combination product is subject to the requirements established by the FDA for that type of component, whether a drug, biologic or device. Devices are subject to the FDA design control device requirements which comprise among other things, design verification, design validation, and testing to assess performance, cleaning, and robustness. Delays in or failure of the studies conducted by us, or failure of our company, our collaborators, if any, or our third-party providers or suppliers to maintain compliance with regulatory requirements could result in increased development costs, delays in or failure to obtain regulatory approval, and associated delays in belzupacap sarotalocan reaching the market.

Changes in methods of product candidate manufacturing or formulation may result in additional costs or delay.

As product candidates proceed through preclinical studies to late-stage clinical trials towards potential approval and commercialization, it is common that various aspects of the development program, such as manufacturing methods and formulation, may be altered along the way in an effort to optimize processes and results. For example, we are planning to use Phase 2 drug product to initiate our first pivotal study and transitioning to the intended commercial drug product as soon as it available to conduct the second planned pivotal study. Such changes to a product candidate carry the risk that they will not achieve the intended objectives of optimizing the performance of the candidate. Any such changes could cause our product candidates to perform differently and affect the results of planned clinical trials or other future clinical trials conducted with the materials manufactured using altered processes. Such changes may also require additional testing, FDA notification or the FDA approval. This could delay or prevent completion of clinical trials, require conducting bridging clinical trials or the repetition of one or more clinical trials, increase clinical trial costs, delay or prevent approval of our product candidates and jeopardize our ability to commence sales and generate revenue.

If we experience delays or difficulties in the enrollment of patients in clinical trials, our receipt of necessary regulatory approvals could be delayed or prevented.

We may not be able to initiate or continue clinical trials for our product candidates if we are unable to locate and enroll a sufficient number of eligible patients to participate in these trials as required by the FDA or comparable foreign regulatory authorities, or as needed to provide appropriate statistical power for a given trial.

In addition, our competitors may in the future commence clinical trials for product candidates that treat the same indications as our product candidates, and patients who would otherwise be eligible for our clinical trials may choose instead to enroll in clinical trials of our competitors. Furthermore, our ability to enroll patients may be significantly delayed by the evolving COVID-19 pandemic, and we cannot accurately predict the extent and scope of such delays at this point. Additionally, the process of finding patients may prove costly. We also may not be able to identify, recruit or enroll a sufficient number of patients to complete our clinical studies because of the perceived risks and benefits of the product candidates under study, the availability and efficacy of competing therapies and clinical trials, the proximity and availability of clinical trial sites for prospective patients, and the patient referral practices of physicians. If patients are unwilling to participate in our studies for any reason, the timeline for recruiting patients, conducting studies and obtaining regulatory approval of potential products may be delayed. Our lead indication of Choroidal Melanoma is a rare disease and as such clinical trial recruitment estimates may be inaccurate and such recruitment may take longer than expected.

Patient enrollment may be affected by other factors, including:

- the severity of the disease under investigation;
- clinicians' and patients' awareness of, and perceptions as to the potential advantages and risks of belzupacap sarotalocan in relation to other available therapies, including any new drugs that may be approved for the indications we are investigating;
- the efforts to obtain and maintain patient consents and facilitate timely enrollment in clinical trials;
- the ability to monitor patients adequately during and after treatment;

- the risk that patients enrolled in clinical trials will drop out of the clinical trials before clinical trial completion;
- competing studies or trails with similar eligibility criteria;
- the ability to recruit clinical trial investigators with the appropriate competencies and experience;
- reporting of the preliminary results of any of our clinical trials; and
- factors we may not be able to control, including the impacts of the ongoing COVID-19 pandemic, that may limit patients, principal investigators or staff or clinical site availability.

We may in the future conduct clinical trials for current or future product candidates outside the United States, and the FDA and comparable foreign regulatory authorities may not accept data from such trials.

We may in the future choose to conduct one or more clinical trials outside the United States, including in Europe. The acceptance of study data from clinical trials conducted outside the United States or another jurisdiction by the FDA or comparable foreign regulatory authority may be subject to certain conditions or may not be accepted at all. In cases where data from foreign clinical trials are intended to serve as the sole basis for marketing approval in the United States, the FDA will generally not approve the application on the basis of foreign data alone unless (i) the data are applicable to the U.S. population and the U.S. medical practice; (ii) the trials were performed by clinical investigators of recognized competence and pursuant to Good Clinical Practices, or GCP, regulations; and (iii) the data may be considered valid without the need for an on-site inspection by the FDA, or if the FDA considers such inspection to be necessary, the FDA is able to validate the data through an on-site inspection or other appropriate means. In addition, even where the foreign study data are not intended to serve as the sole basis for approval, the FDA will not accept the data as support for an application for marketing approval unless the study is well-designed and well-conducted in accordance with GCP and the FDA is able to validate the data from the study through an onsite inspection if deemed necessary. Many foreign regulatory authorities have similar approval requirements. In addition, such foreign trials would be subject to the applicable local laws of the foreign jurisdictions where the trials are conducted. There can be no assurance that the FDA or any comparable foreign regulatory authority will accept data from trials conducted outside of the U.S. or the applicable jurisdiction. If the FDA or any comparable foreign regulatory authority does not accept such data, it would result in the need for additional trials, which could be costly and time-consuming, and which may result in current or future product candidates that we may develop not receiving approval for commercialization in the applicable jurisdiction.

Even if we receive marketing approval for our current or future product candidates in the United States, we may never receive regulatory approval to market our current or future product candidates outside of the United States.

We plan to seek regulatory approval of our current or future product candidates outside of the U.S. Obtaining and maintaining regulatory approval of our product candidates in one jurisdiction does not guarantee that we will be able to obtain or maintain regulatory approval in any other jurisdiction.

For example, even if the FDA grants marketing approval of a product candidate, we may not obtain approvals in other jurisdictions, and comparable regulatory authorities in foreign jurisdictions must also approve the manufacturing, marketing and promotion and reimbursement of the product candidate in those countries. However, a failure or delay in obtaining marketing approval in one jurisdiction may have a negative effect on the regulatory approval process in others. Approval procedures vary among countries and can involve additional product candidate testing and administrative review periods different from those in the United States. The time required to obtain approvals in other countries might differ substantially from that required to obtain the FDA approval. The marketing approval processes in other countries generally implicate all of the risks detailed above regarding the FDA approval in the United States as well as other risks. In particular, in many countries outside of the U.S., products must receive pricing and reimbursement approval before the product can be commercialized. Obtaining this approval can result in substantial delays in bringing products to market in such countries.

Obtaining foreign regulatory approvals and establishing and maintaining compliance with foreign regulatory requirements could result in significant delays, difficulties and costs for us and could delay or prevent the introduction of our products in certain countries. If we or any future collaborator fail to comply with regulatory requirements in international markets or fail to receive applicable marketing approvals, it would reduce the size of our potential market, which could have a material adverse impact on our business, results of operations and prospects.

The results of preclinical studies and early clinical trials may not be predictive of future results.

The outcome of preclinical testing and early clinical trials may not be predictive of the success of later clinical trials. Belzupacap sarotalocan and any other product candidates we may develop may fail to show the desired safety and efficacy in clinical development despite positive results in preclinical studies or having successfully advanced through initial clinical trials. For example, belzupacap sarotalocan may not be effective at slowing or arresting tumor growth or may not preserve visual acuity in later stage trials. Even if belzupacap sarotalocan successfully slows or completely arrests tumor growth, this may not result in a reduction in the risk of metastasis. Additionally, any positive results generated in our ongoing clinical trials and preclinical studies would not ensure that we will achieve similar results in larger, pivotal clinical trials or in clinical trials of belzupacap sarotalocan in broader patient populations. Many companies in the pharmaceutical and biotechnology industries have suffered significant setbacks in late-stage clinical trials even after achieving promising results in preclinical testing and earlier-stage clinical trials, and we cannot be certain that we will not face similar setbacks. Moreover, preclinical and clinical data are often susceptible to varying interpretations and analyses, and many companies that have believed their product candidates performed satisfactorily in preclinical studies and clinical trials have nonetheless failed to obtain marketing approval of their products. Furthermore, the failure of any product candidate to demonstrate safety and efficacy in any clinical trial could negatively impact the perception of any other product candidates then under development and/or cause the FDA or other regulatory authorities to require additional testing before approving any other product candidates.

Interim, "top-line," and preliminary data from our clinical trials that we announce or publish from time to time may change as more patient data become available and are subject to audit and verification procedures that could result in material changes in the final data.

From time to time, we may publicly disclose preliminary, interim or top-line data from our clinical trials. These interim updates are based on a preliminary analysis of then-available data, and the results and related findings and conclusions are subject to change following a more comprehensive review of the data related to the particular study or trial. We also make assumptions, estimations, calculations and conclusions as part of our analyses of data, and we may not have received or had the opportunity to fully and carefully evaluate all data. As a result, the top-line results that we report may differ from future results of the same studies, or different conclusions or considerations may qualify such results, once additional data have been received and fully evaluated. Top-line data also remain subject to audit and verification procedures that may result in the final data being materially different from the preliminary data we previously published. As a result, top-line data should be viewed with caution until the final data are available. In addition, we may report interim analyses of only certain endpoints rather than all endpoints. Interim data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment continues and more patient data become available. Adverse differences between interim data and final data could materially affect our business, financial condition, results of operations and growth prospects.

Further, others, including regulatory agencies, may not accept or agree with our assumptions, estimates, calculations, conclusions or analyses or may interpret or weigh the importance of data differently, which could impact the value of the particular program, the approvability or commercialization of the particular product candidate and our company in general. Further, additional disclosure of interim data by us or by our potential competitors in the future could result in volatility in the price of our common stock. In addition, the information we choose to publicly disclose regarding a particular study or clinical trial is typically selected from a more extensive amount of available information. You or others may not agree with what we determine is the material or otherwise appropriate information to include in our disclosure, and any information we determine not to disclose may ultimately be deemed significant with respect to future decisions, conclusions, views, activities or otherwise regarding a particular product candidate or our business. If the preliminary or top-line data that we report differ from late, final or actual results, or if others, including regulatory authorities, disagree with the conclusions reached, our ability to obtain approval for, and commercialize our product candidates may be harmed, which could materially affect our business, financial condition, results of operations and growth prospects.

Additionally, we may utilize “open-label” trial designs or open-label extensions to our clinical trials in the future. An “open-label” clinical trial is one where both the patient and investigator know whether the patient is receiving the investigational product candidate or either an existing approved drug or placebo. Most typically, open-label clinical trials test only the investigational product candidate and sometimes may do so at different dose levels. Open-label clinical trials are subject to various limitations that may exaggerate any therapeutic effect as patients in open-label clinical trials are aware when they are receiving treatment. Open-label clinical trials may be subject to a “patient bias” where patients perceive their symptoms to have improved merely due to their awareness of receiving an experimental treatment. In addition, open-label clinical trials may be subject to an “investigator bias” where those assessing and reviewing the physiological outcomes of the clinical trials are aware of which patients have received treatment and may interpret the information of the treated group more favorably given this knowledge. The results from an open-label trial or extension may not be predictive of future clinical trial results with belzupacap sarotalocan when studied in a controlled environment with a placebo or active control.

Belzupacap sarotalocan or any future product candidates may cause or reveal significant adverse events, toxicities or other undesirable side effects which may delay or prevent marketing approval. In addition, if we obtain approval for any of our product candidates, significant adverse events, toxicities or other undesirable side effects may be identified during post-marketing surveillance, which could result in regulatory action or negatively affect our ability to market the product.

Adverse events or other undesirable side effects caused by or associated with treatment by belzupacap sarotalocan or our future product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA, the EMA or other comparable foreign regulatory authorities. Although belzupacap sarotalocan has been evaluated in clinical trials, unexpected side effects may still arise in our ongoing or any future clinical trials. These side effects have included pigmentary changes around the tumor margin and vision loss.

During the conduct of clinical trials, subjects report changes in their health, including illnesses, injuries, and discomforts, to their study doctor. Often, it is not possible to determine whether or not the product candidate being studied caused these conditions. It is possible that as we test our product candidates in larger, longer and more extensive clinical trials, or as use of these product candidates becomes more widespread if they receive regulatory approval, illnesses, injuries, discomforts and other adverse events that were not observed in earlier trials, as well as conditions that did not occur or went undetected in previous trials, will be reported by subjects. Many times, side effects are only detectable after investigational products are tested in large-scale, pivotal clinical trials or, in some cases, after they are made available to subjects on a commercial scale after approval.

Additionally, if one or more of our product candidates receives marketing approval, and we or others later identify undesirable side effects or adverse events caused by such products, a number of potentially significant negative consequences could result, including but not limited to:

- regulatory authorities may withdraw approvals of such product or require additional warnings on the label;
- additional clinical trials or post-approval studies;
- we may be required to create a REMS plan, which could include a medication guide outlining the risks of such side effects for distribution to patients, a communication plan for healthcare providers, and/or other elements to assure safe use;
- regulatory authorities may require additional warnings or limitations in the labeling, such as a contraindication, limitation of use, or a boxed warning, or issue safety alerts, Dear Healthcare Provider letters, press releases or other communications containing warnings or other safety information about the product;
- we may be subject to regulatory investigations and government enforcement actions; and

- our reputation may suffer.

Moreover, if belzupacap sarotalocan or any of our future product candidates is associated with undesirable or unexpected side effects in clinical trials, we may elect to abandon or limit their development to more narrow uses or subpopulations in which the undesirable side effects or other characteristics are less prevalent, less severe or more acceptable from a risk-benefit perspective, which may limit the commercial expectations for the product candidate, even if it is approved.

Any of these events could prevent us from achieving or maintaining market acceptance of the particular product candidate, if approved, and could materially affect our business, financial condition, results of operations, and growth prospects.

We may incur additional costs or experience delays in initiating or completing, or ultimately be unable to complete, the development and commercialization of our product candidates.

We may experience delays in initiating or completing our preclinical studies or clinical trials, including as a result of delays in obtaining, or failure to obtain, the FDA's clearance to initiate clinical trials under future INDs. Additionally, we cannot be certain that preclinical studies or clinical trials for our product candidates will not require redesign, will enroll an adequate number of subjects on time, or will be completed on schedule, if at all. We may experience numerous unforeseen events during, or as a result of, preclinical studies and clinical trials that could delay or prevent our ability to receive regulatory approval or commercialize our product candidates, including:

- we may receive feedback from regulatory authorities that require us to modify the design or implementation of our preclinical studies or clinical trials or to delay or terminate a clinical trial;
- regulators or institutional review boards, or IRBs, or ethics committees may delay or may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- we may experience delays in reaching, or fail to reach, agreement on acceptable terms with prospective trial sites and prospective clinical research organizations, or CROs, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- preclinical studies or clinical trials of our product candidates may fail to show safety or efficacy or otherwise produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional preclinical studies or clinical trials, or we may decide to abandon product research or development programs;
- preclinical studies or clinical trials of our product candidates may not produce differentiated or clinically significant results across tumor types or indications;
- the number of patients required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be slower than we anticipate or participants may drop out of these clinical trials or fail to return for post-treatment follow-up at a higher rate than we anticipate;
- our third party contractors may fail to comply with regulatory requirements, fail to maintain adequate quality controls, be unable to provide us with sufficient product supply to conduct or complete preclinical studies or clinical trials, fail to meet their contractual obligations to us in a timely manner, or at all, or may deviate from the clinical trial protocol or drop out of the trial, which may require that we add new clinical trial sites or investigators;
- we may elect to, or regulators or IRBs or ethics committees may require us or our investigators to, suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or a finding that the participants in our clinical trials are being exposed to unacceptable health risks;
- the cost of clinical trials of our product candidates may be greater than we anticipate;
- clinical trials of our product candidates may be delayed due to complications associated with the evolving COVID-19 pandemic;
- the supply or quality of our product candidates or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate;
- our product candidates may have undesirable side effects or other unexpected characteristics, causing us or our investigators, regulators or IRBs or ethics committees to suspend or terminate the trials, or reports may arise from preclinical or clinical testing of other cancer therapies that raise safety or efficacy concerns about our product candidates; and
- regulators may revise the requirements for approving our product candidates, or such requirements may not be as we anticipate.

We could encounter delays if a clinical trial is suspended or terminated by us, by the IRBs of the institutions at which such trials are being conducted, by the Data Safety Monitoring Board for such trial or by the FDA or other regulatory authorities. Such authorities may impose such a suspension or termination or clinical hold due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, adverse findings upon an inspection of the clinical trial operations or trial site by the FDA or other regulatory authorities, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a product, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial. Many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates. Further, the FDA may disagree with our clinical trial design or our interpretation of data from clinical trials or may change the requirements for approval even after it has reviewed and commented on the design for our clinical trials.

Moreover, principal investigators for our trials involving belzupacap sarotalocan or any future clinical trials may serve as scientific advisors or consultants to us from time to time and receive compensation in connection with such services. Under certain circumstances, we may be required to report some of these relationships to the FDA or comparable foreign regulatory authorities. The FDA or comparable foreign regulatory authority may conclude that a financial relationship between us and a principal investigator has created a conflict of interest or otherwise affected the interpretation of the study. The FDA or comparable foreign regulatory authority may therefore question the integrity of the data generated at the applicable clinical trial site, and the utility of the clinical trial itself may be jeopardized. This could result in a delay in approval, or rejection, of our marketing applications by the FDA or comparable foreign regulatory authority, as the case may be, and may ultimately lead to the denial of regulatory approval of one or more of our product candidates.

Our product development costs will also increase if we experience delays in testing or regulatory approvals. We do not know whether any of our future clinical trials will begin as planned, or whether any of our current or future clinical trials will need to be restructured or will be completed on schedule, if at all. Significant preclinical study or clinical trial delays, including those caused by the ongoing COVID-19 pandemic, also could shorten any periods during which we may have the exclusive right to commercialize our product candidates or allow our competitors to bring products to market before we do, which would impair our ability to successfully commercialize our product candidates and may significantly harm our business, operating results, financial condition and prospects.

Even if we receive regulatory approval for any of our product candidates, we will be subject to ongoing regulatory obligations and continued regulatory review, which may result in significant additional expense. Additionally, our product candidates, if approved, could be subject to post-market study requirements, marketing and labeling restrictions, and even recall or market withdrawal if unanticipated safety issues are discovered following approval. In addition, we may be subject to penalties or other enforcement action if we fail to comply with regulatory requirements.

If the FDA or a comparable foreign regulatory authority approves any of our product candidates, the manufacturing processes, labeling, packaging, distribution, import, export, adverse event reporting, storage, advertising, promotion, monitoring, and recordkeeping for the product will be subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, establishment registration and listing, compliance with applicable product tracking and tracing requirements, as well as continued compliance with current Good Manufacturing Practices, or cGMPs, and GCPs for any clinical trials that we conduct post-approval. Any regulatory approvals that we receive for our product candidates may also be subject to limitations on the approved indicated uses for which the product may be marketed or to the conditions of approval, or contain requirements for potentially costly post-marketing studies, including Phase 4 clinical trials, and surveillance to monitor the safety and efficacy of the product. The FDA may also require a REMS in order to approve our product candidates, which could entail requirements for a medication guide, physician communication plans or additional elements to ensure safe use, such as restricted distribution methods, patient registries and other risk minimization tools. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with our third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market, or voluntary or mandatory product recalls;
- manufacturing delays and supply disruptions where regulatory inspections identify observations of noncompliance requiring remediation;
- revisions to the labeling, including limitation on approved uses or the addition of additional warnings, contraindications or other safety information, including boxed warnings;
- imposition of a REMS which may include distribution or use restrictions;
- requirements to conduct additional post-market clinical trials to assess the safety of the product;

- clinical trial holds;
- fines, warning letters or other regulatory enforcement action;
- refusal by the FDA to approve pending applications or supplements to approved applications filed by us or suspension or revocation of approvals;
- product seizure or detention, or refusal to permit the import or export of products; and
- injunctions or the imposition of civil or criminal penalties.

Additionally, the FDA and other regulatory agencies closely regulate the post-approval marketing and promotion of medicines to ensure that they are marketed only for the approved indications and in accordance with the provisions of the approved labeling. The FDA and other regulatory agencies impose stringent restrictions on manufacturers' communications regarding off-label use. In particular, a product may not be promoted for uses that are not approved by the FDA or such other regulatory agencies as reflected in the product's approved labeling. If we do not market our medicines for their approved indications, we may be subject to enforcement action for off-label marketing by the FDA and other federal and state enforcement agencies, including the Department of Justice. Violation of the Federal Food, Drug, and Cosmetic Act and other statutes, including the False Claims Act, relating to the promotion and advertising of prescription products may also lead to investigations or allegations of violations of federal and state healthcare fraud and abuse laws and state consumer protection laws. The federal government has levied large civil and criminal fines against companies for alleged improper promotion of off-label use and has enjoined several companies from engaging in off-label promotion. The FDA has also requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed. If we cannot successfully manage the promotion of our product candidates, if approved, we could become subject to significant liability, which would materially adversely affect our business and financial condition.

The FDA's and other regulatory authorities' policies may change and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our product candidates. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any regulatory approval that we may have obtained, which would adversely affect our business, prospects and ability to achieve or sustain profitability.

We may be unable to obtain orphan drug designations or to maintain the benefits associated with orphan drug status, including market exclusivity, which may cause our revenue, if any, to be reduced.

Under the Orphan Drug Act, the FDA may grant orphan designation to a drug or biologic intended to treat a rare disease or condition, defined as a disease or condition with a patient population of fewer than 200,000 in the United States, or a patient population greater than 200,000 in the United States when there is no reasonable expectation that the cost of developing and making available the drug or biologic in the United States will be recovered from sales in the United States for that drug or biologic. Orphan drug designation must be requested before submitting an NDA or BLA. In the United States, orphan drug designation entitles a party to financial incentives such as opportunities for grant funding towards clinical trial costs, tax advantages and user-fee waivers. After the FDA grants orphan drug designation, the generic identity of the drug and its potential orphan use are disclosed publicly by the FDA. Orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process.

If a product that has orphan drug designation subsequently receives the first FDA approval for a particular active ingredient for the disease for which it has such designation, the product is entitled to orphan product exclusivity, which means that the FDA may not approve any other applications to market the same product for the same indication for seven years, except in limited circumstances such as a showing of clinical superiority to the product with orphan drug exclusivity or if the FDA finds that the holder of the orphan drug exclusivity has not shown that it can assure the availability of sufficient quantities of the orphan drug to meet the needs of patients with the disease or condition for which the drug was designated. As a result, even if our current product candidates and any future product candidates receive orphan exclusivity, the FDA can still approve other drugs that have a different active ingredient for use in treating the same indication or disease. Furthermore, the FDA can waive orphan exclusivity if we are unable to manufacture sufficient supply of our product.

We have obtained orphan designation for belzupacap sarotalocan for the treatment of uveal melanoma from the FDA and EMA, and we may seek additional orphan drug designations for some or all of our current or future product candidates in orphan indications in which there is a medically plausible basis for the use of these products. Even if we obtain orphan drug designation, exclusive marketing rights in the United States may be limited if we seek approval for an indication broader than the orphan designated indication and may be lost if the FDA later determines that the request for designation was materially defective or if the manufacturer is unable to assure sufficient quantities of the product to meet the needs of patients with the rare disease or condition.

The FDA may reevaluate the Orphan Drug Act and its regulations and policies. We do not know if, when, or how the FDA may change the orphan drug regulations and policies in the future, and it is uncertain how any changes might affect our business. Depending on what changes the FDA may make to its orphan drug regulations and policies, our business could be adversely impacted.

Similarly, in the EU, the European Commission grants designation after receiving the opinion of the Committee for Orphan Medicinal Products on a designation application. Orphan drug designation is intended to promote the development of drugs that are intended for the diagnosis, prevention or treatment of life-threatening or chronically debilitating conditions affecting not more than five in 10,000 persons in Europe and for which no satisfactory method of diagnosis, prevention, or treatment has been authorized (or the product would be a significant benefit to those affected). Additionally, designation is granted for drugs intended for the diagnosis, prevention, or treatment of a life-threatening, seriously debilitating or serious and chronic condition and when, without incentives, it is unlikely that sales of the drug in Europe would be sufficient to justify the necessary investment in developing the drug. In Europe, orphan drug designation entitles a party to a number of incentives, such as protocol assistance and scientific advice specifically for designated orphan medicines, and potential fee reductions depending on the status of the sponsor. Generally, if a drug with an orphan drug designation subsequently receives the first marketing approval for the indication for which it has such designation, the drug is entitled to a ten-year period of marketing exclusivity, which precludes the EMA from approving another marketing application for the same drug and indication for that time period, except in limited circumstances. The EU exclusivity period can be reduced to six years if a drug no longer meets the criteria for orphan drug designation or if the drug is sufficiently profitable such that market exclusivity is no longer justified.

A breakthrough therapy designation or fast track designation by the FDA, even if granted for any of our product candidates, may not lead to a faster development, regulatory review or approval process, and each designation does not increase the likelihood that any of our product candidates will receive regulatory approval in the United States.

We may seek breakthrough therapy designation for some of our product candidates. A breakthrough therapy is defined as a drug or biologic that is intended, alone or in combination with one or more other drugs or biologics, to treat a serious or life-threatening disease or condition and preliminary clinical evidence indicates that the drug or biologic may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. For product candidates that have been designated as breakthrough therapies, interaction and communication between the FDA and the sponsor of the trial can help to identify the most efficient path for clinical development while minimizing the number of patients placed in ineffective control regimens. Products designated as breakthrough therapies by the FDA may also be eligible for priority review and accelerated approval. Designation as a breakthrough therapy is within the discretion of the FDA. Accordingly, even if we believe one of our product candidates meets the criteria for designation as a breakthrough therapy, the FDA may disagree and instead determine not to make such designation. In any event, the receipt of a breakthrough therapy designation for a product candidate may not result in a faster development process, review or approval compared to therapies considered for approval under conventional FDA procedures and does not assure ultimate approval by the FDA. In addition, even if one or more of our product candidates qualify as breakthrough therapies, the FDA may later decide that such product candidates no longer meet the conditions for qualification or decide that the time period for FDA review or approval will not be shortened.

We have obtained fast track designation for belzupacap sarotalocan for the treatment of choroidal melanoma and for treatment of non-muscle invasive bladder cancer, and we may seek additional fast track designations for other product candidates we may develop. If a drug or biologic is intended for the treatment of a serious or life-threatening condition and the drug or biologic demonstrates the potential to address unmet medical needs for this condition, the sponsor may apply for fast track designation. The FDA has broad discretion whether or not to grant this designation, so even if we believe a particular product candidate is eligible for this designation, we cannot assure you that the FDA would decide to grant it. Even if we do receive fast track designation, we may not experience a faster development process, review or approval compared to conventional FDA procedures. The FDA may withdraw fast track designation if it believes that the designation is no longer supported by data from our clinical development program. Fast track designation alone does not guarantee qualification for the FDA's priority review procedures.

Accelerated approval by the FDA, even if granted for our current or any other future product candidates, may not lead to a faster development or regulatory review or approval process and it does not increase the likelihood that our product candidates will receive regulatory approval.

We may seek accelerated approval of our current or future product candidates using the FDA's accelerated approval pathway. A product may be eligible for accelerated approval if it treats a serious or life-threatening condition and generally provides a meaningful advantage over available therapies. In addition, it must demonstrate an effect on a surrogate endpoint that is reasonably likely to predict clinical benefit or on a clinical endpoint that can be measured earlier than irreversible morbidity or mortality, or IMM, that is reasonably likely to predict an effect on IMM or other clinical benefit. As a condition of approval, the FDA requires that a sponsor of a drug or biologic receiving accelerated approval perform adequate and well-controlled post-marketing clinical trials. These confirmatory trials must be completed with due diligence. In addition, the FDA currently requires, unless otherwise informed by the agency, pre-approval of promotional materials for products receiving accelerated approval, which could adversely impact the timing of the commercial launch of the product. Even if we do receive accelerated approval, we may not experience a faster development or regulatory review or approval process, and receiving accelerated approval does not provide assurance of ultimate FDA approval.

Risks Related to Our Reliance on Third Parties

We expect to rely on third parties to conduct some of our clinical trials and some aspects of our research and preclinical testing, and those third parties may not perform satisfactorily, including failing to meet deadlines for the completion of such trials, research or testing.

We currently rely and expect to continue to rely on third parties, such as CROs, clinical data management organizations, medical institutions and clinical investigators, to conduct some aspects of our research, preclinical testing and clinical trials. We plan to use a clinical CRO for at least part of the potentially pivotal trial for belzupacap sarotalocan for the treatment of choroidal melanoma. Any of these third parties may terminate their engagements with us or be unable to fulfill their contractual obligations. If we need to enter into alternative arrangements, our product development activities would be delayed.

Our reliance on these third parties for research and development activities reduces our control over these activities, but does not relieve us of our responsibilities. For example, we remain responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan and protocols for the trial, as well as the applicable legal, regulatory and scientific standards. Moreover, the FDA requires us to comply with GCPs for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible, reproducible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Regulatory authorities enforce these GCP requirements through periodic inspections of trial sponsors, clinical trial investigators and clinical trial sites. If we or any of our CROs or clinical trial sites fail to comply with applicable GCP requirements, the data generated in our clinical trials may be deemed unreliable, and the FDA may require us to perform additional clinical trials before approving our marketing applications. We are also required to register ongoing clinical trials and to post the results of completed clinical trials on a government-sponsored database within certain timeframes. Failure to do so can result in fines, adverse publicity and civil and criminal sanctions. Due to the rarity of ocular melanomas, we may engage clinical trial sites that have little experience in the conduct of clinical trials under GCPs. Even though we train the clinical trial sites, monitor the activities, and perform quality audits to assess and ensure compliance, we cannot ensure such compliance.

Furthermore, these third parties may also have relationships with other entities, some of which may be our competitors, for whom they may also be conducting clinical trials or other biological product development activities that could harm our competitive position. If these third parties do not successfully carry out their contractual duties, meet expected deadlines or conduct our clinical trials in accordance with regulatory requirements or our stated protocols, we will not be able to obtain, or may be delayed in obtaining, marketing approvals for any product candidates we may develop and will not be able to, or may be delayed in our efforts to, successfully commercialize our medicines.

We also expect to rely on other third parties to store and distribute drug supplies for our clinical trials. Any performance failure on the part of our distributors could delay clinical development or marketing approval of any product candidates we may develop or commercialization of our medicines, producing additional losses and depriving us of potential product revenue.

We currently rely on third-party contract manufacturing organizations, or CMOs, for the production of clinical supply of belzupacap sarotalocan and may continue to rely on CMOs for the production of commercial supply of belzupacap sarotalocan, if approved. This reliance on CMOs increases the risk that we will not have sufficient quantities of such materials, product candidates, or any therapies that we may develop and commercialize, or that such supply will not be available to us at an acceptable cost, which could delay, prevent, or impair our development or commercialization efforts.

We currently do not have any manufacturing facilities and have no plans to build our own clinical or commercial scale manufacturing capabilities. Instead, we expect to rely on third parties for the manufacture of our product candidates and related raw materials for future pre-clinical and clinical development, as well as for commercial manufacture if any of our product candidates receive marketing approval. We are currently reliant on a single source for each of our regulatory starting materials, drug substance and drug product manufacturing for belzupacap sarotalocan.

We or our third-party suppliers or manufacturers may encounter shortages in the raw materials or active pharmaceutical ingredient, or API, necessary to produce belzupacap sarotalocan and future product candidates we may develop in the quantities needed for our clinical trials or, if belzupacap sarotalocan or any future product candidates we may develop are approved, in sufficient quantities for commercialization or to meet an increase in demand, as a result of capacity constraints or delays or disruptions in the market for the raw materials or APIs, including shortages caused by the purchase of such raw materials or API, by our competitors or others. Even if raw materials or API are available, we may be unable to obtain sufficient quantities at an acceptable cost or quality. The failure by us or our third-party suppliers or manufacturers to obtain the raw materials or API necessary to manufacture sufficient quantities of belzupacap sarotalocan or any future product candidates we may develop could delay, prevent or impair our development efforts and may have a material adverse effect on our business. To date, we have only encountered minor delays in our manufacturing process due to a supply chain constraint with one of our vendors.

Reliance on third party manufacturers may expose us to different risks than if we were to manufacture clinical or commercial supply of our product candidates ourselves. The facilities used by third-party manufacturers to manufacture belzupacap sarotalocan or any future product candidates must be authorized by the FDA pursuant to inspections that will be conducted after we submit a BLA to the FDA. We do not control the manufacturing process of, and are completely dependent on, third-party manufacturers for compliance with cGMP requirements for manufacture of drug products and other laws and regulations. If these third-party manufacturers cannot successfully manufacture material that conforms to our specifications and the strict regulatory requirements of the FDA or others, they will not be able to secure and maintain regulatory approval for their manufacturing facilities. Some of our contract manufacturers may not have produced a commercially-approved product and therefore may not have obtained the requisite FDA approvals to do so. In addition, we have no control over the ability of third-party manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If the FDA or a comparable foreign regulatory authority does not approve these facilities for the manufacture of our product candidates or if it withdraws any such approval in the future, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain regulatory approval for or market our product candidates, if approved.

Finding new CMOs or third-party suppliers involves additional cost and requires our management's time and focus. In addition, there is typically a transition period when a new CMO commences work. Although we generally have not, and do not intend to, begin a clinical trial unless we believe we have on hand, or will be able to obtain, a sufficient supply of our product candidates to complete the clinical trial, any significant delay in the supply of our product candidates or the raw materials needed to produce our product candidates, could considerably delay conducting our clinical trials and potential regulatory approval of our product candidates. Additionally, any changes implemented by a new CMO could delay completion of clinical trials, require the conduct of bridging clinical trials or studies, require the repetition of one or more clinical trials, increase clinical trial costs, delay approval of belzupacap sarotalocan and future product candidates and jeopardize our ability to commence product sales and generate revenue.

As part of their manufacture of our product candidates, our CMOs and third-party suppliers are expected to comply with and respect the intellectual property and proprietary rights of others. If a CMO or third-party supplier fails to acquire the proper licenses or otherwise infringes, misappropriates or otherwise violates the intellectual property or proprietary rights of others in the course of providing services to us, we may have to find alternative CMOs or third-party suppliers or defend against applicable claims, either of which would significantly impact our ability to develop, obtain regulatory approval for or commercialize our product candidates, if approved.

Our failure, or the failure of our third-party manufacturers, to comply with applicable regulations could result in sanctions being imposed on us, including clinical holds, fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, seizures or recalls of product candidates or products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our products. In addition, we may be unable to establish any agreements with third-party manufacturers or to do so on acceptable terms.

Even if we are able to establish agreements with third-party manufacturers, reliance on third-party manufacturers entails additional risks, including:

- failure of third-party manufacturers to comply with regulatory requirements and maintain quality assurance;
- breach of the manufacturing agreement by the third party;
- failure to manufacture our product according to our specifications;
- lack of qualified backup suppliers for those components or materials that are currently purchased from a sole or single source supplier;
- failure to manufacture our product according to our schedule or at all;
- production difficulties caused by unforeseen events that may delay the availability of one or more of the necessary raw materials or delay the manufacture of belzupacap sarotalocan or any future product candidates for use in clinical trials or for commercial supply, including as a result of the COVID-19 pandemic;
- supply or service disruptions or increased costs that are beyond our control;
- misappropriation of our proprietary information, including our trade secrets and know-how; and
- termination or nonrenewal of the agreement by the third party at a time that is costly or inconvenient for us.

Belzupacap sarotalocan and any other product candidates that we may develop may compete with other product candidates and products for access to manufacturing facilities. Additionally, since the beginning of the COVID-19 pandemic, several vaccines for COVID-19 have been granted Emergency Use Authorization, and a number of those later received marketing approval. Additional vaccines may be authorized or approved in the future. The resultant demand for vaccines and potential for manufacturing facilities and materials to be commandeered under the Defense Production Act of 1950, or equivalent foreign legislation, may make it more difficult to obtain materials or manufacturing slots for the products needed for our clinical trials, which could lead to delays in these trials. Any performance failure on the part of our existing or future manufacturers could delay clinical development or marketing approval, and any related remedial measures may be costly or time-consuming to implement. We do not currently have arrangements in place for redundant supply or a second source for all required raw materials used in the manufacture of our product candidates. If our current third-party manufacturers cannot perform as agreed, we may be required to replace such manufacturers and we may be unable to replace them on a timely basis or on terms acceptable to us. Our current and anticipated future dependence upon others for the manufacture of belzupacap sarotalocan or any other future product candidates or products may adversely affect our future profit margins and our ability to commercialize any products that receive marketing approval on a timely and competitive basis.

Risks Related to Commercialization

If belzupacap sarotalocan or any future product candidates do not achieve broad market acceptance, the revenue that we generate from their sales may be limited, and we may never become profitable.

We have never commercialized a product candidate for any indication. Even if belzupacap sarotalocan and any future product candidates are approved by the appropriate regulatory authorities for marketing and sale, they may not gain acceptance among physicians, patients, third-party payors, and others in the medical community. If any product candidates for which we obtain regulatory approval do not gain an adequate level of market acceptance, we may not generate significant revenue and may not become profitable or may be significantly delayed in achieving profitability. Market acceptance of belzupacap sarotalocan and any future product candidates by the medical community, patients and third-party payors will depend on a number of factors, some of which are beyond our control. For example, physicians are often reluctant to switch their patients, and patients may be reluctant to switch, from existing therapies even when new and potentially more effective or safer treatments enter the market. If public perception is influenced by claims that the use of virus-like drug conjugates, or VDCs, is unsafe, whether related to our or our competitors' products, our products may not be accepted by the general public or the medical community. In addition, training clinicians to properly use belzupacap sarotalocan or any future product candidate that requires a similar laser and microinjector may create reluctance by clinicians to adopt our products, potentially adversely affecting our future sales and marketing efforts. Furthermore, such training increases our costs to generate sales associated with any such product. Future adverse events in targeted oncology or the biopharmaceutical industry could also result in greater governmental regulation, stricter labeling requirements and potential regulatory delays in the testing or approvals of our product candidates. In addition, the inclusion or exclusion of products from treatment guidelines established by various physician groups and the viewpoints of influential physicians can affect the willingness of other physicians to prescribe the treatment. We cannot predict whether physicians, physicians' organizations, hospitals, other healthcare providers, government agencies or private insurers will determine that our product is safe, therapeutically effective and cost effective as compared with competing treatments.

Efforts to educate the medical community and third-party payors on the benefits of belzupacap sarotalocan and any future product candidates may require significant resources and may not be successful. If belzupacap sarotalocan or any future product candidates are approved but do not achieve an adequate level of market acceptance, we could be prevented from or significantly delayed in achieving profitability. The degree of market acceptance of any of belzupacap sarotalocan and any future product candidates will depend on a number of factors, including:

- the efficacy of belzupacap sarotalocan and our virus-like particle, or VLP, technology, and any future product candidates;
- the prevalence and severity of adverse events associated with belzupacap sarotalocan and any future product candidates or those products with which they may be co-administered;
- the clinical indications for which belzupacap sarotalocan are approved and the approved claims that we may make for the products;
- limitations or warnings contained in the product's FDA-approved labeling or those of comparable foreign regulatory authorities, including potential limitations or warnings for belzupacap sarotalocan and any future product candidates that may be more restrictive than other competitive products;
- changes in the standard of care for the targeted indications for belzupacap sarotalocan and any future product candidates, which could reduce the marketing impact of any claims that we could make following FDA approval or approval by comparable foreign regulatory authorities, if obtained;
- the relative convenience and ease of administration of belzupacap sarotalocan and any future product candidates and any products with which they are co-administered;
- the cost of treatment compared with the economic and clinical benefit of alternative treatments or therapies;
- the availability of adequate coverage or reimbursement by third party payors, including government healthcare programs such as Medicare and Medicaid and other healthcare payors;
- the price concessions required by third-party payors to obtain coverage;
- the perception of physicians, patients, third-party payors and others in the medical community of the relative safety, efficacy, convenience, effect on quality of life and cost effectiveness of belzupacap sarotalocan compared to those of other available treatments;
- the willingness of patients to pay out-of-pocket in the absence of adequate coverage and reimbursement;
- the extent and strength of our marketing and distribution of belzupacap sarotalocan and any future product candidates;
- the safety, efficacy, and other potential advantages over, and availability of, alternative treatments already used or that may later be approved;

- distribution and use restrictions imposed by the FDA or comparable foreign regulatory authorities with respect to belzupacap sarotalocan and any future product candidates or to which we agree as part of a REMS or voluntary risk management plan;
- the timing of market introduction of belzupacap sarotalocan and any future product candidates, as well as competitive products;
- our ability to offer belzupacap sarotalocan and any future product candidates for sale at competitive prices;
- the willingness of the target patient population to try new therapies and of physicians to prescribe these therapies;
- the extent and strength of our third-party manufacturer and supplier support;
- the publicity concerning our belzupacap sarotalocan or competing products and treatments;
- the actions of companies that market any products with which belzupacap sarotalocan and any future product candidates may be co-administered;
- the approval of other new products;
- adverse publicity about belzupacap sarotalocan and any future product candidates or any products with which they are co-administered, or favorable publicity about competitive products; and
- potential product liability claims.

We currently have no marketing and sales organization and have no experience in marketing products. If we are unable to establish marketing and sales capabilities or enter into agreements with third parties to market and sell our product candidates, we may not be able to generate product revenue.

We have never commercialized a product candidate and we currently have no sales, marketing or distribution capabilities and have no experience in marketing products. Our operations to date have been limited to organizing and staffing our company, business planning, raising capital, acquiring the rights to our product candidate and undertaking preclinical studies and clinical trials of our product candidate. We intend to develop an in-house marketing organization and sales force, which will require significant capital expenditures, management resources and time. We will have to compete with other pharmaceutical and biotechnology companies to recruit, hire, train and retain marketing and sales personnel. We may not be successful in transitioning from a company with a development focus to a company capable of supporting commercial activities.

In addition to establishing internal sales, marketing and distribution capabilities, we will pursue collaborative arrangements regarding the sales and marketing of our products, however, there can be no assurance that we will be able to establish or maintain such collaborative arrangements, or if we are able to do so, that they will have effective sales forces. Any revenue we receive will depend upon the efforts of such third parties, which may not be successful. Further, if we enter into arrangements with third parties to perform sales and marketing services, our product revenues, if any, may be lower than if we were to market and sell any products that we develop ourselves. We may have little or no control over the marketing and sales efforts of such third parties and our revenue from product sales may be lower than if we had commercialized our product candidates ourselves. We also face competition in our search for third parties to assist us with the sales and marketing efforts of our product candidates.

Furthermore, developing a sales and marketing organization requires significant investment, is time-consuming and could delay the launch of our product candidate. We may not be able to build an effective sales and marketing organization in the United States, the European Union (EU) or other key global markets. If we are unable to build our own distribution and marketing capabilities or to find suitable partners for the commercialization of our product candidate, we may have difficulties generating revenue from them.

There can be no assurance that we will be able to develop in-house sales and distribution capabilities or establish or maintain relationships with third-party collaborators to commercialize any product in the United States or overseas.

We may face competition, which may result in others discovering, developing or commercializing drugs before or more successfully than we do.

The biopharmaceutical industry is characterized by intense competition and rapid innovation. While we are not aware of anyone currently developing a treatment for choroidal melanoma, in the future our competitors may be able to develop other compounds or drugs that are able to achieve similar or better results than us. There are multiple companies that have drugs in clinical development for the treatment of NMIBC that are unresponsive to Bacillus Calmette-Guerin, such as Sesen Bio, Inc., FerGene, Inc., UroGen Pharma Ltd., CG Oncology, Inc. and ImmunityBio, Inc. Our potential competitors include major multinational pharmaceutical companies, established biotechnology companies, specialty pharmaceutical companies and universities and other research institutions. Many of our potential competitors have substantially greater financial, technical and other resources, such as larger research and development staff and experienced marketing and manufacturing organizations and well-established sales forces. Smaller or early-stage companies may also prove to be significant competitors, particularly as they develop novel approaches to treating disease indications that our product candidates are also focused on treating. Established pharmaceutical companies may also invest heavily to accelerate discovery and development of novel therapeutics or to in-license novel therapeutics that could make the product candidates that we develop obsolete. Mergers and acquisitions in the biotechnology and pharmaceutical industries may result in even more resources being concentrated in our competitors. Competition may increase further as a result of advances in the commercial applicability of technologies and greater availability of capital for investment in these industries. Our competitors, either alone or with collaboration partners, may succeed in developing, acquiring or licensing on an exclusive basis drug or biologic products that are more effective, safer, more easily commercialized or less costly than our product candidates or may develop proprietary technologies or secure patent protection that we may need for the development of our technologies and products, which may reduce or eliminate our commercial opportunity. We believe the key competitive factors that will affect the development and commercial success of our product candidates are efficacy, safety, tolerability, reliability, convenience of use, price and reimbursement.

Even if we obtain regulatory approval of our product candidates, the availability and price of our potential future competitors' products could limit the demand and the price we are able to charge for our product candidates. We may not be able to implement our business plan if the acceptance of our product candidates is inhibited by price competition or the reluctance of physicians to switch from existing methods of treatment to our product candidates, or if physicians switch to other new drug or biologic products or choose to reserve our product candidates for use in limited circumstances. For additional information regarding our competition, see "Business—Competition."

Even if we are able to commercialize any product candidates, such products may become subject to unfavorable pricing regulations, third-party reimbursement practices or healthcare reform initiatives, which would harm our business.

In the United States and markets in other countries, patients generally rely on third-party payors to reimburse all or part of the costs associated with their treatment. Adequate coverage and reimbursement from governmental healthcare programs, such as Medicare and Medicaid, and commercial payors is critical to new product acceptance. Our ability to successfully commercialize any products that we may develop also will depend in part on the extent to which reimbursement for these products and related treatments will be available from government health administration authorities, private health insurers, and other organizations. Government authorities and third-party payors, such as private health insurers and health maintenance organizations, decide which medications they will pay for and establish reimbursement levels.

There is also significant uncertainty related to the insurance coverage and reimbursement of newly approved products and coverage may be more limited than the purposes for which the medicine is approved by the FDA or comparable foreign regulatory authorities. In the United States, the principal decisions about reimbursement for new medicines are typically made by the Centers for Medicare & Medicaid Services, or CMS, an agency within the U.S. Department of Health and Human Services, or HHS. CMS decides whether and to what extent a new medicine will be covered and reimbursed under Medicare and private payors tend to follow CMS to a substantial degree. Factors payors consider in determining reimbursement are based on whether the product is:

- a covered benefit under its health plan;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- cost-effective; and
- neither experimental nor investigational.

A primary trend in the U.S. healthcare industry and elsewhere is cost containment. Government authorities and third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. Government authorities currently impose mandatory discounts for certain patient groups, such as Medicare, Medicaid and Veterans Affairs, or VA, hospitals, and may seek to increase such discounts at any time. Future regulation may negatively impact the price of our products, if approved.

Net prices for drugs may be reduced by mandatory discounts or rebates required by government healthcare programs or private payors and by any future relaxation of laws that presently restrict imports of drugs from countries where they may be sold at lower prices than in the United States. Increasingly, third-party payors are requiring that drug companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. We cannot be sure that reimbursement will be available for any product candidate that we commercialize and, if reimbursement is available, that the level of reimbursement will be sufficient. In addition, many pharmaceutical manufacturers must calculate and report certain price reporting metrics to the government, such as average sales price, or ASP, and best price. Penalties may apply in some cases when such metrics are not submitted accurately and timely. Further, these prices for drugs may be reduced by mandatory discounts or rebates required by government healthcare programs.

We also cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States, particularly in light of the most recent presidential election, or abroad. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, our product candidates may lose any marketing approval that may have been obtained and we may not achieve or sustain profitability, which would adversely affect our business.

If the market opportunity for belzupacap sarotalocan is smaller than we estimate or if any regulatory approval that we obtain is based on a narrower definition of the patient population, our revenue and ability to achieve profitability will be adversely affected, possibly materially.

The incidence and prevalence for target patient populations of belzupacap sarotalocan and any future product candidates has not been established with precision. Belzupacap sarotalocan is a virus-like drug conjugate product candidate being developed for the first line treatment of primary choroidal melanoma. Our projections of both the number of people who have choroidal melanoma, as well as additional ocular oncology and bladder cancer indications, are based on our estimates.

The total addressable market opportunity will ultimately depend upon, among other things, the patient criteria included in the final label, the indications for which belzupacap sarotalocan is approved for sale, acceptance by the medical community and patient access, product pricing and reimbursement. The number of patients with choroidal melanoma, choroidal metastases and NMIBC for which belzupacap sarotalocan may be approved as treatment may turn out to be lower than expected, patients may not be otherwise amenable to treatment with our products, or new patients may become increasingly difficult to identify or gain access to, all of which would adversely affect our results of operations and our business. Belzupacap sarotalocan is our only product candidate and therefore our business is dependent on the market opportunity for our product.

Our business operations and current and future relationships with investigators, healthcare professionals, consultants, third-party payors, patient organizations and customers will be subject to applicable healthcare regulatory laws, which could expose us to penalties.

Our business operations and current and future arrangements with investigators, healthcare professionals, consultants, third-party payors, patient organizations and customers, may expose us to broadly applicable fraud and abuse and other healthcare laws. These laws may constrain the business or financial arrangements and relationships through which we conduct our operations, including how we research, market, sell and distribute our product candidates, if approved. Such laws include, but are not limited to:

- The federal Anti-Kickback Statute, which prohibits, among other things, persons or entities from knowingly and willfully soliciting, receiving, offering or paying any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind, to induce, or in return for, the purchase, lease, order, arrangement, or recommendation of any good, facility, item or service for which payment may be made, in whole or in part, under a federal healthcare program, such as the Medicare and Medicaid programs. A person or entity does not need to have actual knowledge of the federal Anti-Kickback Statute or specific intent to violate it to have committed a violation. Violations are subject to civil and criminal fines and penalties for each violation, plus up to three times the remuneration involved, imprisonment, and exclusion from government healthcare programs. In addition, the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal False Claims Act or federal civil money penalties;
- The federal civil and criminal false claims laws and Civil Monetary Penalties Law, such as the federal False Claims Act, which impose criminal and civil penalties and authorize civil whistleblower or qui tam actions, against individuals or entities for, among other things: knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent; knowingly making, using or causing to be made or used, a false statement of record material to a false or fraudulent claim or obligation to pay or transmit money or property to the federal government or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay money to the federal government. Manufacturers can be held liable under the federal False Claims Act even when they do not submit claims directly to government payors if they are deemed to "cause" the submission of false or fraudulent claims. The federal False Claims Act also permits a private individual acting as a "whistleblower" to bring actions on behalf of the federal government alleging violations of the federal False Claims Act and to share in any monetary recovery;
- The federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which created new federal criminal statutes that prohibit a person from knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program or obtain, by means of false or fraudulent pretenses, representations or promises, any of the money or property owned by, or under the custody or control of, any healthcare benefit program, regardless of the payor (e.g., public or private) and knowingly and willfully falsifying, concealing or covering up by any trick or device a material fact or making any materially false, fictitious, or fraudulent statements or representations in connection with the delivery of, or payment for, healthcare benefits, items or services relating to healthcare matters; similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, and their respective implementing regulations, including the Final Omnibus Rule published in January 2013, which impose requirements on certain covered healthcare providers, health plans, and healthcare clearinghouses as well as their respective business associates, independent contractors or agents of covered entities, that perform services for them that involve the creation, maintenance, receipt, use, or disclosure of, individually identifiable health information relating to the privacy, security and transmission of individually identifiable health information. HITECH also created new tiers of civil monetary penalties, amended HIPAA to make civil and criminal penalties directly applicable to business associates, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorneys' fees and costs associated with pursuing federal civil actions. In addition, there may be additional federal, state and non-U.S. laws which govern the privacy and security of health and other personal information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts;
- The United States Physician Payments Sunshine Act and its implementing regulations, which requires certain manufacturers of drugs, devices, biologics and medical supplies that are reimbursable under Medicare, Medicaid, or the Children's Health Insurance Program, with specific exceptions, to report annually to the government information related to certain payments and other transfers of value to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), certain other health care professionals beginning in 2022 (physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists & anesthesiologist assistants, and certified nurse-midwives), and teaching hospitals, as well as ownership and investment interests held by the physicians described above and their immediate family members;
- Federal government price reporting laws, which require us to calculate and report complex pricing metrics in an accurate and timely manner to government programs; and
- Federal consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers.

Additionally, we are subject to state and foreign equivalents of each of the healthcare laws and regulations described above, among others, some of which may be broader in scope and may apply regardless of the payor. Many states in the United States have adopted laws similar to the federal Anti-Kickback Statute and False Claims Act, and may apply to our business practices, including, but not limited to, research, distribution, sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental payors, including private insurers. In addition, some states have passed laws that require pharmaceutical companies to comply with the April 2003 Office of Inspector General Compliance Program Guidance for Pharmaceutical Manufacturers and/or the Pharmaceutical Research and Manufacturers of America's Code on Interactions with Healthcare Professionals. Several states also impose other marketing restrictions or require pharmaceutical companies to make marketing or price disclosures to the state and require the registration of pharmaceutical sales representatives. State and foreign laws, including for example the European Union General Data Protection Regulation, which became effective May 2018 also govern the privacy and security of health information in some circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts. There are ambiguities as to what is required to comply with these state requirements and if we fail to comply with an applicable state law requirement we could be subject to penalties. Finally, there are state and foreign laws governing the privacy and security of health information, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

The scope and enforcement of each of these laws is uncertain and subject to rapid change in the current environment of healthcare reform, especially in light of the lack of applicable precedent and regulations. Federal and state enforcement bodies have increased their scrutiny of interactions between healthcare companies and healthcare providers, which has led to a number of investigations, prosecutions, convictions and settlements in the healthcare industry. Ensuring that our internal operations and future business arrangements with third parties comply with applicable healthcare laws and regulations will involve substantial costs. It is possible that governmental authorities will conclude that our business practices do not comply with current or future statutes, regulations, agency guidance or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of the laws described above or any other governmental laws and regulations that may apply to us, we may be subject to significant penalties, including administrative, civil and criminal penalties, damages, fines, disgorgement, the exclusion from participation in federal and state healthcare programs, individual imprisonment, reputational harm, and the curtailment or restructuring of our operations, as well as additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws. Further, defending against any such actions can be costly and time consuming, and may require significant financial and personnel resources. Therefore, even if we are successful in defending against any such actions that may be brought against us, our business may be impaired. If any of the physicians or other providers or entities with whom we expect to do business is found to not be in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs and imprisonment. If any of the above occur, our ability to operate our business and our results of operations could be adversely affected.

Current and future healthcare legislative reform measures may have a material adverse effect on our business and results of operations.

The United States and many foreign jurisdictions have enacted and/or proposed legislative and regulatory changes affecting the healthcare system that could prevent or delay regulatory approval of our current or future product candidates or any future product candidates, restrict or regulate post-approval activities, and affect our ability to profitably sell a product for which we obtain regulatory approval. Changes in laws, regulations, statutes or the interpretation of existing laws and regulations could impact our business in the future by requiring, for example: (i) changes to our manufacturing arrangements, (ii) additions or modifications to product labeling, (iii) the recall or discontinuation of our products or (iv) additional record-keeping requirements. If any such changes were to be imposed, they could adversely affect the operation of our business. In the United States, there have been, and continue to be, a significant number of legislative initiatives to contain healthcare costs. For example, in March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education and Reconciliation Act, or collectively, the ACA, was passed, which substantially changed the way healthcare is financed by both governmental and private insurers, and significantly impacted the United States pharmaceutical industry. The ACA, among other things, subjects biological products to potential competition by lower-cost biosimilars, addresses a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted or injected, increases the minimum Medicaid rebates owed by manufacturers under the Medicaid Drug Rebate Program and extends the rebate program to individuals enrolled in Medicaid managed care organizations, establishes annual fees and taxes on manufacturers of certain branded prescription drugs, and creates a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 50% (increased to 70% pursuant to the Bipartisan Budget Act of 2018, effective as of 2019) point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D. Since then, the ACA risk adjustment program payment parameters have been updated annually.

Since its enactment, there have been numerous judicial, administrative, executive, and legislative challenges to certain aspects of the ACA. On June 17, 2021, the U.S. Supreme Court dismissed on procedural grounds the most recent judicial challenge to the ACA brought by several states without specifically ruling on the constitutionality of the ACA. Prior to the Supreme Court's decision, President Biden issued an Executive Order that initiated a special enrollment period from February 15, 2021 through August 15, 2021 for purposes of obtaining health insurance coverage through the ACA marketplace. The Executive Order also instructed certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. It is possible that the ACA will be subject to judicial or Congressional challenges in the future. It is unclear how other healthcare reform measures of the Biden administrations or other efforts, if any, to challenge repeal or replace the ACA, will impact our business.

Additionally, there has been increasing legislative and enforcement interest in the United States with respect to specialty drug pricing practices. Specifically, there have been several recent U.S. Congressional inquiries and proposed federal and state legislation designed to, among other things, bring more transparency to drug pricing, reduce the cost of prescription drugs under Medicare, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs. At the federal level, President Biden signed an Executive Order on July 9, 2021, affirming the administration's policy to (i) support legislative reforms that would lower the prices of prescription drug and biologics, including by allowing Medicare to negotiate drug prices, by imposing inflation caps, and, by supporting the development and market entry of lower-cost generic drugs and biosimilars; and (ii) support the enactment of a public health insurance option. Among other things, the Executive Order also directs HHS to provide a report on actions to combat excessive pricing of prescription drugs, enhance the domestic drug supply chain, reduce the price that the Federal government pays for drugs, and address price gouging in the industry; and directs the FDA to work with states and Indian Tribes that propose to develop section 804 Importation Programs in accordance with the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and the FDA's implementing regulations. The FDA released such implementing regulations on September 24, 2020, which went into effect on November 30, 2020, providing guidance for states to build and submit importation plans for drugs from Canada. On September 25, 2020, CMS stated drugs imported by states under this rule will not be eligible for federal rebates under Section 1927 of the Social Security Act and manufacturers would not report these drugs for "best price" or Average Manufacturer Price purposes. Since these drugs are not considered covered outpatient drugs, CMS further stated it will not publish a National Average Drug Acquisition Cost for these drugs. Further, on November 20, 2020, CMS issued an Interim Final Rule implementing the Most Favored Nation, or MFN, Model under which Medicare Part B reimbursement rates will be calculated for certain drugs and biologicals based on the lowest price drug manufacturers receive in Organization for Economic Cooperation and Development countries with a similar gross domestic product per capita. The MFN Model regulations mandate participation by identified Part B providers and would have applied to all U.S. states and territories for a seven-year period beginning January 1, 2021, and ending December 31, 2027. On December 28, 2020, the U.S. District Court for the Northern District of California issued a nationwide preliminary injunction against implementation of the interim final rule. On January 13, 2021, in a separate lawsuit brought by industry groups in the U.S. District of Maryland, the government defendants entered a joint motion to stay litigation on the condition that the government would not appeal the preliminary injunction granted in the U.S. District Court for the Northern District of California and that performance for any final regulation stemming from the MFN Model interim final rule shall not commence earlier than sixty (60) days after publication of that regulation in the Federal Register. Further, authorities in Canada have passed rules designed to safeguard the Canadian drug supply from shortages. If implemented, importation of drugs from Canada and the MFN Model may materially and adversely affect the price we receive for any of our product candidates. Additionally, on December 2, 2020, HHS published a regulation removing safe harbor protection for price reductions from pharmaceutical manufacturers to plan sponsors under Medicare Part D, either directly or through pharmacy benefit managers, unless the price reduction is required by law. The rule also creates a new safe harbor for price reductions reflected at the point-of-sale, as well as a safe harbor for certain fixed fee arrangements between pharmacy benefit managers and manufacturers. On November 30, 2020, HHS published a regulation removing safe harbor protection for price reductions from pharmaceutical manufacturers to plan sponsors under Medicare Part D, either directly or through pharmacy benefit managers, unless the price reduction is required by law. The rule also creates a new safe harbor for price reductions reflected at the point-of-sale, as well as a safe harbor for certain fixed fee arrangements between pharmacy benefit managers and manufacturers. Pursuant to court order, the removal and addition of the aforementioned safe harbors were delayed and recent legislation imposed a moratorium on implementation of the rule until January 1, 2026. Although a number of these and other proposed measures may require authorization through additional legislation to become effective, and the Biden administration may reverse or otherwise change these measures, both the Biden administration and Congress have indicated that it will continue to seek new legislative measures to control drug costs. For example, based on a recent executive order, the Biden administration expressed its intent to pursue certain policy initiatives to reduce drug prices.

Other legislative changes have been proposed and adopted in the United States since the ACA was enacted. In August 2011, the Budget Control Act of 2011, among other things, created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, was unable to reach required goals, thereby triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions of Medicare payments to providers up to 2% per fiscal year, and, due to subsequent legislative amendments, will remain in effect through 2030, unless additional Congressional action is taken. Pursuant to the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, as well as subsequent legislation, these reductions were suspended from May 1, 2020 through March 31, 2022 due to the COVID-19 pandemic. A 1% payment reduction occurred from April 1, 2022 through June 30, 2022, and the 2% payment reduction resumed July 1, 2022.

Further, on May 30, 2018, the Right to Try Act, was signed into law. The law, among other things, provides a federal framework for certain patients to access certain investigational new product candidates that have completed a Phase 1 clinical trial and that are undergoing investigation for the FDA approval. Under certain circumstances, eligible patients can seek treatment without enrolling in clinical trials and without obtaining the FDA permission under the FDA expanded access program. There is no obligation for a pharmaceutical manufacturer to make its product candidates available to eligible patients as a result of the Right to Try Act.

At the state level, individual states are increasingly aggressive in passing legislation and implementing regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing. In addition, regional health care authorities and individual hospitals are increasingly using bidding procedures to determine what pharmaceutical products and which suppliers will be included in their prescription drug and other health care programs. These measures could reduce the ultimate demand for our products, once approved, or put pressure on our product pricing.

We expect that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, which could result in reduced demand for our current or future product candidates or additional pricing pressures. In particular any policy changes through CMS as well as local state Medicaid programs could have a significant impact on our business.

Our revenue prospects could be affected by changes in healthcare spending and policy in the United States and abroad. We operate in a highly regulated industry and new laws, regulations or judicial decisions, or new interpretations of existing laws, regulations or decisions, related to healthcare availability, the method of delivery or payment for healthcare products and services could negatively impact our business, operations and financial condition.

There have been, and likely will continue to be, legislative and regulatory proposals at the foreign, federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future, including repeal, replacement or significant revisions to the ACA. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare and/or impose price controls may adversely affect:

- the demand for our current or future product candidates, if we obtain regulatory approval;
- our ability to set a price that we believe is fair for our products;
- our ability to obtain coverage and reimbursement approval for a product;
- our ability to generate revenue and achieve or maintain profitability;
- the level of taxes that we are required to pay; and
- the availability of capital.

Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors, which may adversely affect our future profitability. Further, it is possible that additional governmental action is taken in response to the COVID-19 pandemic.

Risks Related to Our Intellectual Property

Our ability to compete may decline if we do not adequately protect our proprietary rights, and our proprietary rights do not necessarily address all potential threats to our competitive advantage.

Our commercial success depends upon obtaining and maintaining proprietary rights to our intellectual property estate, including rights relating to our technology platform using HPV-derived virus-like particles to target tumors and VDCs like belzupacap sarotalocan, as well as successfully defending these rights against third-party challenges and successfully enforcing these rights to prevent third-party infringement. We will only be able to protect belzupacap sarotalocan or a future product candidate derived from our platform from unauthorized use by third parties to the extent that valid and enforceable patents cover it. Our ability to maintain patent protection for belzupacap sarotalocan or a future product candidate is uncertain due to a number of factors, including that:

- others may design around our patent claims to produce competitive technologies, products or methods that fall outside of the scope of our patents;
- we may not obtain patent protection in all jurisdictions that may eventually provide us a significant business opportunity; and
- any patents issued to us may be successfully challenged by third parties.

Even with our patents covering belzupacap sarotalocan, we may still not be able to make use or sell belzupacap sarotalocan or a future product candidate because of the patent rights of others. Others may have filed patent applications covering compositions, products or methods that are similar or identical to ours, which could materially affect our ability to successfully commercialize belzupacap sarotalocan or a future product candidate.

The issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, and our owned and licensed patents may be challenged in the courts or patent offices in the United States and abroad. Such challenges may result in loss of exclusivity or freedom to operate or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and products. Moreover, patents have a limited lifespan. In the United States, the natural expiration of a patent is generally 20 years after it is filed. Various extensions may be available; however, the life of a patent, and the protection it affords, is limited.

Obtaining and maintaining a patent portfolio entails significant expense, including periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and patent applications. These expenditures can be at numerous stages of prosecuting patent applications and over the lifetime of maintaining and enforcing issued patents. We may or may not choose to pursue or maintain protection for particular intellectual property in our portfolio. If we choose to forgo patent protection or to allow a patent application or patent to lapse purposefully or inadvertently, our competitive position could suffer. Furthermore, we employ reputable law firms and other professionals to help us comply with the various procedural, documentary, fee payment and other similar provisions we are subject to and, in many cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. There are situations, however, in which failure to make certain payments or noncompliance with certain requirements in the patent process can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, our competitors might be able to enter the market, which would have a material adverse effect on our business.

Legal action that may be required to enforce our patent rights can be expensive and may involve the diversion of significant management time. There can be no assurance that we will have sufficient financial or other resources to file and pursue infringement claims, which typically last for years before they are concluded. In addition, these legal actions could be unsuccessful and result in the invalidation of our patents, a finding that they are unenforceable or a requirement that we enter into a licensing agreement with or pay monies to a third party for use of technology covered by our patents. We may or may not choose to pursue litigation or other actions against those that have infringed on our patents, or have used them without authorization, due to the associated expense and time commitment of monitoring these activities. If we fail to successfully protect or enforce our intellectual property rights, our competitive position could suffer, which could harm our results of operations.

We may need to license intellectual property from third parties, and such licenses may not be available or may not be available on commercially reasonable terms.

A third party may hold intellectual property rights, including patent rights, that are important or necessary to the development of belzupacap sarotalocan or any future product candidates. It may be necessary for us to use the patented or proprietary technology of third parties to commercialize belzupacap sarotalocan or any future product candidates, in which case we would be required to obtain a license from these third parties. Such a license may not be available on commercially reasonable terms, or at all, and we could be forced to accept unfavorable contractual terms. If we are unable to obtain such licenses on commercially reasonable terms, our business could be harmed.

The growth of our business may depend in part on our ability to acquire, in-license or use third-party proprietary rights. We may be unable to acquire or in-license any such proprietary rights from third parties that we identify as necessary or important to our business operations. In addition, we may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. Were that to happen, we may need to cease use of the compositions or methods covered by those third-party intellectual property rights, and may need to seek to develop alternative approaches that do not infringe on those intellectual property rights, which may entail additional costs and development delays, even if we were able to develop such alternatives, which may not be feasible. Even if we are able to obtain a license, it may be non-exclusive, which means that our competitors may also receive access to the same technologies licensed to us. In that event, we may be required to expend significant time and resources to develop or license replacement technology.

We rely on intellectual property licensed from third parties. We face risks with respect to such reliance, including the risk that, if we fail to comply with our obligations in the agreements under which we license intellectual property rights from third parties or otherwise experience disruptions to our business relationships with our licensors, we could lose license rights that are important to our business.

We are a party to a number of intellectual property license agreements that are important to our business. Our existing license agreements impose on us various diligence, milestone payment, royalty and other obligations. If we fail to comply with any of our obligations under these agreements, or we are subject to a bankruptcy, our licensors may have the right to terminate the license, in which event we would not be able to market any products covered by the license.

Disputes may also arise between us and our licensors regarding intellectual property subject to a license agreement, including:

- the scope of rights granted and related obligations under the license agreement and other interpretation-related issues;
- our licensor's right to license or sublicense patent and other rights to us, and whether and the extent to which the right is retained by a third party;
- whether and the extent to which our technology infringes on intellectual property of the licensor that is not subject to the licensing agreement;
- our right to sublicense patent and other rights to third parties under collaborative development relationships;
- our diligence obligations with respect to the use of the licensed technology in relation to our development and commercialization of belzupacap sarotalocan or any future product candidates, and what activities satisfy those diligence obligations; and
- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us.

If disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on acceptable terms, we may be unable to successfully develop and commercialize the affected product candidates.

In addition, disputes may arise regarding the payment of the royalties due to licensors in connection with our exploitation of the rights we license from them. Licensors may contest the basis of royalties we retained and claim that we are obligated to make payments under a broader basis. Such disputes may be costly to resolve and may divert management's attention away from day-to-day activities. In addition to the costs of any litigation we may face, any legal action against us could increase our payment obligations under the respective agreement and require us to pay interest and potentially damages to such licensors. If disputes over intellectual property that we have licensed from third parties prevent or impair our ability to maintain our licensing arrangements on acceptable terms, we or our collaborators may be unable to successfully manufacture and commercialize belzupacap sarotalocan or a future product candidate.

If we fail to comply with our obligations under the license agreements, our licensors may have the right to terminate these agreements, in which event we might not be able to manufacture or market belzupacap sarotalocan or a future product candidate. Termination of these agreements or reduction or elimination of our rights under these agreements may result in our having to negotiate new or reinstated agreements with less favorable terms or cause us to lose our rights under these agreements, including our rights to important intellectual property or technology.

If we do not obtain patent term extension in the United States under the Hatch-Waxman Act and in foreign countries under similar legislation with respect to our belzupacap sarotalocan or a future product candidate, thereby potentially extending the term of marketing exclusivity for such product, our business may be harmed.

In the United States, a patent that covers an FDA-approved drug or biologic may be eligible for a term extension designed to restore the period of the patent term that is lost during the premarket regulatory review process conducted by the FDA. Depending upon the timing, duration and conditions of the FDA marketing approval of our product candidates, one or more of our owned, co-owned, or in-licensed U.S. patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act. The Hatch-Waxman Act permits a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. The Hatch-Waxman Act allows a maximum of one patent to be extended per FDA-approved product as compensation for the patent term lost during the FDA regulatory review process. A patent term extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval and only those claims covering such approved drug product, a method for using it or a method for manufacturing it may be extended. In the EU, belzupacap sarotalocan or a future product candidate may be eligible for term extensions based on similar legislation. In either jurisdiction, however, we may not receive an extension if we fail to apply within applicable deadlines, fail to apply prior to expiration of relevant patents or otherwise fail to satisfy applicable requirements. Even if we are granted such extension, the duration of such extension may be less than our request. If we are unable to obtain a patent term extension, or if the term of any such extension is less than our request, the period during which we can enforce our patent rights for that product will be in effect shortened and our competitors may obtain approval to market competing products sooner. The resulting reduction of years of revenue from applicable products could be substantial.

Patents and patent applications involve highly complex legal and factual questions, which, if determined adversely to us, could negatively impact our patent position.

The patent positions of biopharmaceutical and biotechnology companies and other actors in our fields of business can be highly uncertain and typically involve complex scientific, legal and factual analyses. In particular, the interpretation and breadth of claims allowed in some patents covering biopharmaceutical compositions may be uncertain and difficult to determine and are often affected materially by the facts and circumstances that pertain to the patented compositions and the related patent claims. The standards of the U.S. Patent and Trademark Office, or the USPTO, and its foreign counterparts are sometimes uncertain and could change in the future. Consequently, the issuance and scope of patents cannot be predicted with certainty. Patents, if issued, may be challenged, invalidated or circumvented. The U.S. patents and patent applications may also be subject to interference or derivation proceedings, and the U.S. patents may be subject to reexamination proceedings, post-grant review and/or *inter partes* review in the USPTO. International patents may also be subject to opposition or comparable proceedings in the corresponding international patent office, which 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, derivation, reexamination, post-grant review, *inter partes* review and opposition proceedings may be costly. Accordingly, rights under any issued patents may not provide us with sufficient protection against competitive products or processes.

Furthermore, even if not challenged, our patents and patent applications may not prevent others from designing their products to avoid being covered by our claims. If the breadth or strength of protection provided by the patent applications we hold with respect to belzupacap sarotalocan or a future product candidate is threatened, it could dissuade companies from collaborating with us to develop, and could threaten our or their ability to successfully commercialize, belzupacap sarotalocan or a future product candidate.

In addition, changes in, or different interpretations of, patent laws in the United States and other countries may permit others to use our discoveries or to develop and commercialize our technology without providing any compensation to us, may limit the scope of patent protection that we are able to obtain. The laws of some countries do not protect intellectual property rights to the same extent as the U.S. laws, and those countries may lack adequate rules and procedures for defending our intellectual property rights.

Third parties may assert claims against us alleging infringement of their patents and proprietary rights, or we may need to become involved in lawsuits to defend or enforce our patents, either of which could result in substantial costs or loss of productivity, delay or prevent the development and commercialization of product candidates, prohibit our use of proprietary technology or sale of potential products or put our patents and other proprietary rights at risk.

Our commercial success depends upon our ability to develop, manufacture, market and sell belzupacap sarotalocan or a future product candidate without alleged or actual infringement, misappropriation or other violation of the patents and proprietary rights of third parties. Litigation relating to infringement or misappropriation of patent and other intellectual property rights in the biotechnology industry is common, including patent infringement lawsuits, interferences, oppositions, reexamination proceedings, post-grant review, and/or *inter partes* review before the USPTO and corresponding international patent offices. The various markets in which we plan to operate are subject to frequent and extensive litigation regarding patents and other intellectual property rights. In addition, many companies in intellectual property-dependent industries, including the biotechnology and pharmaceutical industries, have employed intellectual property litigation as a means to gain an advantage over their competitors. As a result of any patent infringement claims, or in order to avoid any potential infringement claims, we may choose to seek, or be required to seek, a license from the third party, which may require payment of substantial royalties or fees, or require us to grant a cross-license under our intellectual property rights. These licenses may not be available on reasonable terms or at all. Even if a license can be obtained on reasonable terms, the rights may be nonexclusive, which would give our competitors access to the same intellectual property rights. If we are unable to enter into a license on acceptable terms, we could be prevented from commercializing belzupacap sarotalocan or a future product candidate, or forced to modify belzupacap sarotalocan or a future product candidate, or to cease some aspect of our business operations, which could harm our business significantly. We might also be forced to redesign or modify our technology or product candidates so that we no longer infringe the third-party intellectual property rights, which may result in significant cost or delay to us, or which redesign or modification could be impossible or technically infeasible. Even if we were ultimately to prevail, any of these events could require us to divert substantial financial and management resources that we would otherwise be able to devote to our business.

Further, if a patent infringement suit is brought against us or our third-party service providers, our development, manufacturing or sales activities relating to belzupacap sarotalocan or a future product candidate that is the subject of the suit may be delayed or terminated. In addition, defending such claims may cause us to incur substantial expenses and, if successful, could cause us to pay substantial damages if we are found to be infringing a third party's patent rights. These damages potentially could include increased damages and attorneys' fees if we are found to have infringed such rights willfully. Some claimants may have substantially greater resources than we do and may be able to sustain the costs of complex intellectual property litigation to a greater degree and for longer periods of time than we could. In addition, patent holding companies that focus solely on extracting royalties and settlements by enforcing patent rights may target us. In addition, if the breadth or strength of protection provided by the patents and patent applications we own or in-license is threatened, it could dissuade companies from collaborating with us to license, develop or commercialize current or future product candidates.

We may in the future be subject to third-party claims and similar adversarial proceedings or litigation in other jurisdictions regarding our infringement of the patent rights of third parties. Even if such claims are without merit, a court of competent jurisdiction could hold that these third-party patents are valid, enforceable and infringed, and the holders of any such patents may be able to block our ability to further develop or commercialize belzupacap sarotalocan or a future product candidate unless we obtain a license under the applicable patents, or until such patents expire or are finally determined to be invalid or unenforceable.

If we or one of our licensors were to initiate legal proceedings against a third party to enforce a patent covering our technology or a product candidate, the defendant could counterclaim that our patent is invalid or unenforceable. In patent litigation in the United States and Europe, defendant counterclaims alleging invalidity or unenforceability are common. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, for example, lack of novelty, obviousness or non-enablement. The outcome of proceedings involving assertions of invalidity and unenforceability during patent litigation is unpredictable. With respect to the validity of patents, for example, we cannot be certain that there is no invalidating prior art of which we and the patent examiner were unaware during prosecution, but that an adverse third party may identify and submit in support of such assertions of invalidity. If a defendant were to prevail on a legal assertion of invalidity or unenforceability, we would lose at least part of the patent protection on belzupacap sarotalocan or a future product candidate.

We will not seek to protect our intellectual property rights in all jurisdictions throughout the world, and we may not be able to adequately enforce our intellectual property rights even in the jurisdictions where we seek protection.

Filing, prosecuting and defending patents on belzupacap sarotalocan or a future product candidate in all countries and jurisdictions throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States could be less extensive than those in the United States. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the U.S., or from selling or importing products made using our inventions in and into the U.S. or other jurisdictions.

We have and have applied for patents in those countries where we intend to make, have made, use, offer for sale or sell products and where we assess the risk of infringement to justify the cost of seeking patent protection. Competitors may use our technologies in jurisdictions where we do not pursue and obtain patent protection to develop their own products and may export otherwise infringing products to territories where we have patent protection, but where our ability to enforce our patent rights is not as strong as in the United States. These products may compete with any products that we may develop, and our patents or other intellectual property rights may not be effective or sufficient to prevent such competition.

The laws of some other countries do not protect intellectual property rights to the same extent as the laws of the United States. For example, European patent law restricts the patentability of methods of treatment of the human body more than U.S. law does. Patent protection must ultimately be sought on a country-by-country basis, which is an expensive and time-consuming process with uncertain outcomes. Accordingly, we chose not to seek patent protection in certain countries, and we will not have the benefit of patent protection in such countries. In addition, the legal systems of some countries, particularly developing countries, do not favor the enforcement of patents and other intellectual property protection, especially those relating to biopharmaceuticals or biotechnologies. As a result, many companies have encountered significant difficulties in protecting and defending intellectual property rights in certain jurisdictions outside the United States. Such issues may make it difficult for us to stop the infringement of our patents, if obtained, or the misappropriation of our other intellectual property rights.

Furthermore, proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, subject our patents to the risk of being invalidated or interpreted narrowly, subject our patent applications to the risk of not issuing or provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded to us, if any, may not be commercially meaningful, while the damages and other remedies we may be ordered to pay such third parties may be significant. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

If we or our licensors are unable to protect the confidentiality of the proprietary information related to our product or process, our business and competitive position would be harmed.

We and our licensors rely on confidentiality agreements to protect unpatented know-how, technology and other proprietary information related to our product and process, to maintain our competitive position. For example, our licensor LI-COR maintains its manufacture of IRDye 700DX® dye molecules (used in belzupacap sarotalocan) as a trade secret. Trade secrets and know-how can be difficult to protect. In particular, the trade secrets and know-how in connection with our development programs and other proprietary technology we may develop may over time be disseminated within the industry through independent development, the publication of journal articles describing the methodology and the movement of personnel with scientific positions in academic and industry.

We seek to protect our proprietary information, in part, by entering into non-disclosure and confidentiality agreements with parties who have access to them, such as our employees, corporate collaborators, outside scientific collaborators, contract manufacturers, consultants, advisors and other third parties. We also enter into confidentiality and invention or patent assignment agreements with our employees and consultants. Despite these efforts, any of these parties may breach the agreements and disclose our proprietary information. Monitoring unauthorized uses and disclosures of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property will be effective. In addition, we may not be able to obtain adequate remedies for any such breaches. Enforcing a claim that a party illegally disclosed or misappropriated proprietary information is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or are unwilling to protect trade secrets.

We may be subject to claims that third parties have an ownership interest in our trade secrets. For example, we may have disputes arise from conflicting obligations of our employees, consultants or others who are involved in developing belzupacap sarotalocan. Litigation may be necessary to defend against these and other claims challenging ownership of our trade secrets. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable trade secret rights, such as exclusive ownership of, or right to use, trade secrets that are important to our therapeutic programs and other proprietary technologies we may develop. Such an outcome could have a materially adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to our management and other employees.

Moreover, our competitors may independently develop knowledge, methods and know-how equivalent to our proprietary information. Competitors could purchase our products and replicate some or all of the competitive advantages we derive from our development efforts for technologies on which we do not have patent protection. If any of our proprietary information were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our proprietary information were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

We also seek to preserve the integrity and confidentiality of our data and other confidential information by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have confidence in these individuals, organizations and systems, agreements or security measures may be breached and detecting the disclosure or misappropriation of confidential information and enforcing a claim that a party illegally disclosed or misappropriated confidential information is difficult, expensive and time-consuming, and the outcome is unpredictable. Further, we may not be able to obtain adequate remedies for any breach. In addition, our confidential information may otherwise become known or be independently discovered by competitors, in which case we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us, which could have a material adverse effect on our business, financial condition, results of operations and prospects.

Risks Related to our Business and Industry

If we lose key management personnel, or if we fail to recruit additional highly skilled personnel, our ability to pursue our business strategy will be impaired, could result in loss of markets or market share and could make us less competitive.

Our ability to compete in the highly competitive biopharmaceutical industries depends upon our ability to attract, manage, motivate and retain highly qualified managerial, scientific and medical personnel. We are highly dependent on our management, scientific and medical personnel. The loss of the services of any of our executive officers, other key employees, and other scientific and medical advisors, and our inability to find suitable replacements for these individuals could harm our business. In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us. If we are unable to continue to attract and retain high quality personnel, our ability to pursue our growth strategy will be limited.

Competition for skilled personnel in our industry is intense and may limit our ability to hire and retain highly qualified personnel on acceptable terms, in a timely manner or at all. In particular, we have experienced a very competitive hiring environment in the Boston area, where we are headquartered. Many of the other pharmaceutical companies that we compete against for qualified personnel have greater financial and other resources, different risk profiles and a longer history in the industry than we do. They also may provide more diverse opportunities and better chances for career advancement. Some of these characteristics may be more appealing to high-quality candidates than what we have to offer. To induce valuable employees to remain at our company, in addition to salary and cash incentives, we have provided equity incentive awards that vest over time. The value to employees of restricted stock awards and stock options that vest over time may be significantly affected by movements in our stock price that are beyond our control, and may at any time be insufficient to counteract more lucrative offers from other companies. Despite our efforts to retain valuable employees, members of our management, scientific and development teams are at-will employees and may terminate their employment with us on short notice. We do not maintain “key man” insurance policies on the lives of these individuals or the lives of any of our other employees. Given the stage of our programs and our plans to expand operations, our success also depends on our ability to continue to attract, retain and motivate highly skilled junior, mid-level and senior personnel across our organization.

The ongoing COVID-19 pandemic, or a similar pandemic, epidemic, or outbreak of an infectious disease, may materially and adversely affect our business and our financial results and could cause a disruption to the development of our product candidates.

Public health crises such as pandemics or similar outbreaks could adversely impact our business. The ongoing COVID-19 pandemic continues to evolve, and has led to the implementation of various responses, including government-imposed quarantines, travel restrictions and other public health safety measures. The extent to which the ongoing COVID-19 pandemic impacts our operations or those of our third party partners, including our preclinical studies or clinical trial operations, will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration of the pandemic, the emergence of new variants that may be more severe or contagious, acceptance of vaccines and the actions of government authorities, health systems, and private companies to contain the spread of COVID-19 or treat its impact, among others. The continued spread of COVID-19 globally could adversely impact our preclinical or clinical trial operations in the United States, including our ability to recruit and retain patients and principal investigators and site staff who, as healthcare providers, may have heightened exposure to COVID-19. For example, similar to other biopharmaceutical companies, we may experience delays in initiating IND-enabling studies, protocol deviations, enrolling our clinical trials, or dosing of patients in our clinical trials as well as in activating new trial sites. COVID-19 may also affect employees of third-party CROs located in affected geographies that we rely upon to carry out our clinical trials. Any negative impact COVID-19 has to patient enrollment or treatment or the execution of our product candidates could cause costly delays to clinical trial activities, which could adversely affect our ability to obtain regulatory approval for and to commercialize our product candidates, increase our operating expenses, and have a material adverse effect on our financial results.

Additionally, timely enrollment in planned clinical trials is dependent upon clinical trial sites which could be adversely affected by global health matters, such as pandemics. Some factors from the ongoing COVID-19 pandemic that will delay or otherwise adversely affect enrollment in the clinical trials of our product candidates, as well as our business generally, include:

- the potential diversion of healthcare resources away from the conduct of clinical trials to focus on pandemic concerns, including the attention of physicians serving as our clinical trial investigators, hospitals serving as our clinical trial sites and hospital staff supporting the conduct of our prospective clinical trials;
- limitations on travel that could interrupt key trial and business activities, such as clinical trial site initiations and monitoring, domestic and international travel by employees, contractors or patients to clinical trial sites, as well as any government-imposed travel restrictions or quarantines or employer-required isolation requirements that will impact the ability or willingness of patients, employees or contractors to travel to our clinical trial sites or secure visas or entry permissions, a loss of face-to-face meetings and other interactions with potential partners, any of which could delay or adversely impact the conduct or progress of our prospective clinical trials;
- the potential negative affect on the operations of our third-party manufacturers;
- interruption in global shipping affecting the transport of clinical trial materials, such as drug product and conditioning drugs and other supplies used in our clinical trials;
- business disruptions caused by potential workplace, laboratory and office closures and an increased reliance on employees working from home, disruptions to or delays in ongoing laboratory experiments;
- operations, staffing shortages, travel limitations or mass transit disruptions, any of which could adversely impact our business operations or delay necessary interactions with local regulators, ethics committees and other important agencies and contractors;
- changes in local regulations as part of a response to the ongoing COVID-19 pandemic, which may require us to change the ways in which our clinical trials are conducted, which may result in unexpected costs, or to discontinue such clinical trials altogether; and
- interruption or delays in the operations of the FDA or other regulatory authorities, which may impact review and approval timelines.

We have taken temporary precautionary measures intended to help minimize the risk of the virus to our employees, including temporarily requiring certain of our employees to work remotely, suspending all non-essential travel worldwide for our employees and discouraging employee attendance at industry events and in-person work-related meetings, which could negatively affect our business. We cannot presently predict the scope and severity of the planned and potential shutdowns or disruptions of businesses and government agencies, such as the SEC, or the FDA. Since March 2020 when foreign and domestic inspections of facilities were largely placed on hold, the FDA has been working to resume routine surveillance, bioresearch monitoring and pre-approval inspections on a prioritized basis. Since April 2021, the FDA has conducted limited inspections and employed remote interactive evaluations, using risk management methods, to meet user fee commitments and goal dates. Ongoing travel restrictions and other uncertainties continue to impact oversight operations both domestic and abroad and it is unclear when standard operational levels will resume. The FDA is continuing to complete mission-critical work, prioritize other higher-tiered inspectional needs (e.g., for-cause inspections), and carry out surveillance inspections using risk-based approaches for evaluating public health. Should FDA determine that an inspection is necessary for approval and an inspection cannot be completed during the review cycle due to restrictions on travel, and the FDA does not determine a remote interactive evaluation to be adequate, the agency has stated that it generally intends to issue, depending on the circumstances, a complete response letter or defer action on the application until an inspection can be completed. During the COVID-19 public health emergency, a number of companies announced receipt of complete response letters due to the FDA's inability to complete required inspections for their applications. Regulatory authorities outside the U.S. may adopt similar restrictions or other policy measures in response to the ongoing COVID-19 pandemic and may experience delays in their regulatory activities.

These and other factors arising from COVID-19 could worsen in countries that are already afflicted with COVID-19 or could continue to spread to additional countries. Any of these factors, and other factors related to any such disruptions that are unforeseen, could have a material adverse effect on our business and our results of operation and financial condition. Further, uncertainty around these and related issues could lead to adverse effects on the economy of the United States and other economies, which could impact our ability to raise the necessary capital needed to develop and commercialize our programs and product candidates.

Inadequate funding for the FDA, the SEC and other government agencies, including from government shut downs, or other disruptions to these agencies' operations, could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, the ability to hire and retain key personnel and accept the payment of user fees, and statutory, regulatory and policy changes. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of the SEC and other government agencies on which our operations may rely, including those that fund research and development activities, is subject to the political process, which is inherently fluid and unpredictable.

Disruptions at the FDA and other agencies may also slow the time necessary for new product candidates to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. If a prolonged government shutdown occurs, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. Further, future government shutdowns could impact our ability to access the public markets and obtain necessary capital in order to properly capitalize and continue our operations.

If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could have a material adverse effect on the success of our business.

We are subject to numerous environmental, health and safety laws and regulations, including those governing laboratory procedures and the handling, use, storage, treatment and disposal of hazardous materials and wastes. Our operations involve the use of hazardous and flammable materials, including chemicals and biological and radioactive materials. Our operations also produce hazardous waste products. We generally contract with third parties for the disposal of these materials and wastes. We cannot eliminate the risk of contamination or injury from these materials. In the event of contamination or injury resulting from our use of hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. We also could incur significant costs associated with civil or criminal fines and penalties.

Although we maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us in connection with our storage or disposal of biological, hazardous or radioactive materials.

Changes in tax laws or in their implementation or interpretation may adversely affect us or our investors.

The rules dealing with the U.S. federal, state and local income taxation are constantly under review by persons involved in the legislative process and by the Internal Revenue Service, or IRS, and the U.S. Treasury Department. Changes to tax laws (which changes may have retroactive application) could adversely affect us or holders of our common stock. In recent years, many changes have been made and changes are likely to continue to occur in the future.

It cannot be predicted whether, when, in what form, or with what effective dates, new tax laws may be enacted, or regulations and rulings may be enacted, promulgated or issued under existing or new tax laws, which could result in an increase in our or our stockholders' tax liability or require changes in the manner in which we operate in order to minimize or mitigate any adverse effects of changes in tax law or in the interpretation thereof.

Our internal information technology systems, or those of our third-party CROs, contractors, consultants or others who process sensitive information on our behalf, may fail or suffer security incidents, loss or leakage of data and other compromises, any of which could result in a material disruption of our product candidates' development programs, compromise sensitive information related to our business or prevent us from accessing such information, expose us to liability or otherwise adversely affect our business.

In the ordinary course of our business, we may collect, store and transmit confidential information, including intellectual property, proprietary business information and personal information (including health information). It is critical that we do so in a secure manner to maintain the confidentiality, integrity and availability of such information. We also have outsourced certain of our operations to third parties, and as a result we manage a number of third parties who have access to our information. Despite the implementation of security measures, our internal computer systems, and those of our CROs and other third parties on which we rely, are vulnerable to damage from computer viruses, unauthorized access, cyberattacks by sophisticated nation-state and nation-state supported actors or by malicious third parties (including the deployment of harmful malware (such as malicious code, viruses and worms), natural disasters, global pandemics, fire, terrorism, war and telecommunication and electrical failures, fraudulent activity, as well as security incidents from inadvertent or intentional actions (such as error or theft) by our employees, contractors, consultants, business partners, and/or other third parties, phishing attacks, ransomware, denial-of-service attacks, social engineering schemes and other means that affect service reliability and threaten the confidentiality, integrity and availability of information), which may compromise our system infrastructure as well as lead to unauthorized access, disclosure or acquisition of information. Cyberattacks are increasing in their frequency, sophistication and intensity. The techniques used to sabotage or to obtain unauthorized access to our information technology systems or those upon whom we rely on to process our information change frequently, and we may be unable to anticipate such techniques or implement adequate preventative measures or to stop security incidents in all instances. The recovery systems, security protocols, network protection mechanisms and other security measures that we have integrated into our information technology systems, which are designed to protect against, detect and minimize security breaches, may not be adequate to prevent or detect service interruption, system failure or data loss.

Significant disruptions of our information technology systems or security incidents could adversely affect our business operations and/or result in the loss, misappropriation, and/or unauthorized access, use or disclosure of, or the prevention of access to, confidential information (including trade secrets or other intellectual property, proprietary business information and personal information including health information), and could result in financial, legal, business and reputational harm to us. If such disruptions were to occur and cause interruptions in our operations, it could result in a material disruption of our product development programs. For example, the loss of clinical trial data from completed, ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. Further, the COVID-19 pandemic has resulted in a significant number of our employees and partners working remotely, which increases the risk of a data breach or issues with data and cybersecurity. To the extent that any disruption or security incident results in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the further development of our future product candidates could be delayed.

We may also be required to comply with laws, regulations, rules, industry standards, and other legal obligations that require us to maintain the security of personal data. We may also have contractual and other legal obligations to notify collaborators, our clinical trial participants, or other relevant stakeholders of security incidents. Failure to prevent or mitigate cyberattacks could result in unauthorized access to data, including personal data. Most jurisdictions have enacted laws requiring companies to notify individuals, regulatory authorities, and others of security breaches involving certain types of data. Such disclosures are costly, could lead to negative publicity, may cause our collaborators or other relevant stakeholders to lose confidence in the effectiveness of our security measures and require us to expend significant capital and other resources to respond to and/or alleviate problems caused by the actual or perceived security breach. In addition, the costs to respond to a cybersecurity event or to mitigate any identified security vulnerabilities could be significant, including costs for remediating the effects of such an event, paying a ransom, restoring data from backups, and conducting data analysis to determine what data may have been affected by the breach. In addition, our efforts to contain or remediate a security incident or any vulnerability exploited to cause an incident may be unsuccessful, and efforts and any related failures to contain or remediate them could result in interruptions, delays, harm to our reputation, and increases to our insurance coverage.

In addition, litigation resulting from security breaches may adversely affect our business. Unauthorized access to our information technology systems could result in litigation with our collaborators, our clinical trial participants, or other relevant stakeholders. These proceedings could force us to spend money in defense or settlement, divert management's time and attention, increase our costs of doing business, or adversely affect our reputation. We could be required to fundamentally change our business activities and practices in response to such litigation, which could have an adverse effect on our business. If a security breach were to occur and the confidentiality, integrity or availability of our data or the data of our collaborators were disrupted, we could incur significant liability, which could negatively affect our business and damage our reputation.

Furthermore, we may not have adequate insurance coverage or otherwise protect us from, or adequately mitigate, liabilities or damages. The successful assertion of one or more large claims against us that exceeds our available insurance coverage, or results in changes to our insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), could have an adverse effect on our business. In addition, we cannot be sure that our existing insurance coverage and coverage for errors and omissions will continue to be available on acceptable terms or that our insurers will not deny coverage as to any future claim.

We are, or may become, subject to stringent and changing privacy and information security laws, regulations, standards, policies and contractual obligations related to data privacy and security. Our actual or perceived failure to comply with such data privacy and security obligations could lead to government enforcement actions (which could include civil or criminal fines or penalties), a disruption of our clinical trials or commercialization of our products, private litigation, changes to our business practices, increased costs of operations, and adverse publicity that could otherwise negatively affect our operating results and business. Compliance or the failure to comply with such obligations could increase the costs of our products, could limit their use or adoption, and could otherwise negatively affect our operating results and business.

Regulation of data (including personal and clinical trial data) is evolving, as federal, state, and foreign governments continue to adopt new, or modify existing, laws and regulations addressing data privacy and security, and the collection, processing, storage, transfer, and use of data. These new or proposed laws and regulations are subject to differing interpretations and may be inconsistent among jurisdictions, and guidance on implementation and compliance practices are often updated or otherwise revised, which adds to the complexity of processing personal data. Moreover, we are subject to the terms of our privacy and security policies, representations, certifications, standards, publications, contracts and other obligations to third parties related to data privacy, security and processing. These and other requirements could require us or our collaborators to incur additional costs to achieve compliance, limit our competitiveness, necessitate the acceptance of more onerous obligations in our contracts, restrict our ability to use, store, transfer, and process data, impact our or our collaborators' ability to process or use data in order to support the provision of our products, affect our or our collaborators' ability to offer our products in certain locations, cause regulators to reject, limit or disrupt our clinical trial activities, result in increased expenses, reduce overall demand for our products, and make it more difficult to meet expectations of relevant stakeholders.

We and any potential collaborators may be subject to federal, state and foreign data protection laws and regulations including, without limitation, laws that regulate personal data such as health data. For example, in the United States, numerous federal and state laws and regulations, including federal health information privacy laws, state personal information laws (e.g., the California Consumer Privacy Act of 2018, or CCPA), state data breach notification laws, state health information privacy laws and federal and state consumer protection laws and regulations (e.g., Section 5 of the Federal Trade Commission Act), govern the collection, use, disclosure and protection of health-related and other personal data. These laws and regulations could apply to our operations, the operations of our collaborators, or other relevant stakeholders upon whom we depend. In addition, we may obtain personal data (including health information) from third parties (including research institutions from which we obtain clinical trial data) that are subject to privacy and security requirements under the Health Insurance Portability and Accountability Act, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH. Depending on the facts and circumstances, we could be subject to significant penalties if we violate HIPPA. Additionally, we could be subject to criminal penalties if we knowingly obtain, use, or disclose individually identifiable health information maintained by a HIPAA-covered entity in a manner that is not authorized or permitted by HIPAA.

The CCPA became effective on January 1, 2020, and gives California residents expanded rights to access and delete their personal data, opt out of certain personal data sharing and receive detailed information about how their personal data is used. The CCPA requires covered businesses to provide new disclosures to California residents. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. Although there are limited exemptions for clinical trial data and the CCPA's implementation standards and enforcement practices are likely to remain uncertain for the foreseeable future, the CCPA may increase our compliance costs and potential liability. It is anticipated that the CCPA will be expanded on January 1, 2023, when the California Privacy Rights Act of 2020, or CPRA, becomes operative. The CPRA will, among other things, give California residents the ability to limit use of certain sensitive information, establish restrictions on the retention of personal data, expand the types of data breaches subject to the CCPA's private right of action and establish a new California Privacy Protection Agency to implement and enforce the new law. In addition, other states have enacted or proposed data privacy laws. For example, Virginia recently passed its Consumer Data Protection Act and Colorado recently passed the Colorado Privacy Act, both of which differ from the CPRA and go into effect in 2023. These laws demonstrate our vulnerability to the evolving regulatory environment related to personal data. As we expand our operations, these and similar laws may increase our compliance costs and potential liability.

Foreign data protection laws, such as, without limitation, the EU's GDPR and the EU member state implementing legislation, may also apply to health-related and other personal data that we process, including, without limitation, personal data relating to clinical trial participants. European data protection laws impose strict obligations on the ability to process health-related and other personal data of European data subjects, including in relation to security (which requires the adoption of administrative, physical and technical safeguards designed to protect such information), collection, use and transfer or personal data. European data protection laws may affect our use, collection, analysis, and transfer (including cross-border transfer) of such personal data. These include, without limitation, several requirements relating to transparency related to communications with data subjects regarding the processing of their personal data, obtaining the consent of the individuals to whom the personal data relates, limitations on the retention of personal data, increased requirements pertaining to health data, establishing a legal basis for processing, notification of data processing obligations or security incidents to the competent national data protection authorities and/or data subjects, the security and confidentiality of the personal data, various rights that data subjects may exercise with respect to their personal data, and strict rules and restrictions on the transfer of personal data outside of Europe (including from the European Economic Area (EEA), Switzerland and United Kingdom (UK)).

European data protection laws prohibit, without an appropriate legal basis, the transfer of personal data to countries outside of Europe, such as to the United States, which are not considered relevant authorities to provide an adequate level of data protection. A decision by the Court of Justice of the EU, or the "Schrems II" ruling, invalidated the EU-U.S. Privacy Shield Framework, and raised questions about whether the European Commission's Standard Contractual Clauses, or SCCs, one of the primary alternatives to the Privacy Shield, can lawfully be used for personal data transfers from Europe to the United States or most other countries. Similarly, the Swiss Federal Data Protection and Information Commissioner recently opined that the Swiss-U.S. Privacy Shield is inadequate for transfers of personal data from Switzerland to the United States. The UK, whose data protection laws are similar to those of the EU, has similarly determined that the EU-U.S. Privacy Shield is not a valid mechanism for lawfully transferring personal data from the UK to the U.S. Use of the SCCs must now be assessed on a case-by-case basis taking into account the legal regime applicable in the destination country, in particular, applicable surveillance laws and rights of individuals and additional measures and/or contractual provisions may need to be put in place. However, the nature of these additional measures is currently uncertain. Additionally, the European Commission recently adopted new SCCs that will repeal the SCCs adopted under the Data Protection Directive. This means we may need to update our contracts that involve the transfer of personal data outside of the EEA to the new SCCs. As supervisory authorities issue further guidance on personal data export mechanisms, including on the new SCCs, and/or start taking enforcement action, our compliance costs could increase, we may be subject to complaints and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we conduct clinical trials, this could negatively impact our business.

Further, the UK's decision to leave the EU, often referred to as Brexit, and ongoing developments in the UK have created uncertainty regarding data protection regulation in the UK. Following December 31, 2020, and the expiry of transitional arrangements between the UK and EU, the data protection obligations of the GDPR continue to apply to UK-related Processing of personal data in substantially unvaried form under the so-called "UK GDPR" (i.e., the GDPR as it continues to form part of UK law by virtue of section 3 of the EU (Withdrawal) Act 2018, as amended). However, going forward, there is increasing risk for divergence in application, interpretation and enforcement of the data protection laws as between the UK and EEA. Furthermore, the relationship between the UK and the EEA in relation to certain aspects of data protection law remains uncertain, including with respect to regulation of data transfers between the EU member states and the UK. On June 28, 2021, the European Commission issued an adequacy decision under the GDPR which allows transfers (other than those carried out for the purposes of the UK immigration control) of personal data from the EEA to the UK to continue without restriction for a period of four years ending June 27, 2025. After that period, the adequacy decision may be renewed, but, only if the UK continues to ensure an adequate level of data protection. During these four years, the European Commission will continue to monitor the legal situation in the UK and could intervene at any point if the UK deviates from the level of data protection in place at the time of issuance of the adequacy decision. If the adequacy decision is withdrawn or not renewed, transfers of personal data from the EEA to the UK will require a valid 'transfer mechanism' and we may be required to implement new processes and put new agreements in place, such as SCCs, to enable transfers of personal data from the EEA to the UK to continue.

The increase of foreign privacy and security legal frameworks with which we must comply, increases our compliance burdens and exposure to substantial fines and penalties for non-compliance. For example, under the GDPR, entities that violate the GDPR can face fines of up to the greater of 20 million euros or 4% of their worldwide annual turnover (revenue). Additionally, regulators could prohibit our use of personal data subject to the GDPR. The GDPR has increased our responsibility and potential liability in relation to personal data that we process, requiring us to put in place additional mechanisms to comply with the GDPR and other foreign data protection requirements.

We may also publish privacy policies and other documentation regarding our collection, processing, use and disclosure of personal data and/or other confidential information. Although we endeavor to comply with our published policies and documentation, we may at times fail to do so or may be perceived to have failed to do so. Moreover, despite our efforts, we may not be successful in achieving compliance if our employees or contractors fail to comply with our published policies and documentation. Such failures can subject us to potential foreign, local, state and federal action if they are found to be deceptive, unfair, or misrepresentative of our actual practices.

Compliance with U.S. federal and state as well as foreign data protection laws and regulations could require us to take on more onerous obligations in our contracts, restrict our ability to collect, use and disclose data, or in some cases, impact our ability to operate in certain jurisdictions. Failure, or perceived failure, to comply with federal, state and foreign data protection laws and regulations could result in government enforcement actions (which could include civil or criminal penalties, fines or penalties), private litigation, a diversion of management attention, adverse publicity and negative effects on our operating results and business. There can be no assurance that the limitations of liability in our contracts would be enforceable or adequate or would otherwise protect us from liabilities or damages if we fail to comply with applicable data protection laws, privacy policies or data protection obligations related to information security or security breaches. Moreover, clinical trial participants or subjects about whom we or our collaborators obtain information, as well as the providers who share this information with us, may limit our ability to use and disclose the information. Claims that we have violated individuals' privacy rights, failed to comply with data protection laws, contracts or privacy notices or breached other obligations, even if we are not found liable, could be expensive and time consuming to defend and could result in adverse publicity that could harm our business. Compliance with data protection laws may be time consuming, require additional resources and could result in increased expenses, reduce overall demand for our products and make it more difficult to meet expectations of or commitments to our relevant stakeholders.

Business disruptions could seriously harm our future revenue and financial condition and increase our costs and expenses.

Our operations, and those of our contractors and consultants, could be subject to earthquakes, power shortages, telecommunications failures, water shortages, floods, hurricanes, typhoons, fires, extreme weather conditions, medical epidemics, pandemics and other natural or man-made disasters or business interruptions, for which we are predominantly self-insured. The occurrence of any of these business disruptions could seriously harm our operations and financial condition and increase our costs and expenses. We rely on third-party manufacturers to produce our product candidates. Our ability to obtain clinical supplies of our product candidates could be disrupted if the operations of these suppliers are affected by a man-made or natural disaster or other business interruption.

Any future acquisitions, in-licensing or strategic partnerships may increase our capital requirements, dilute our stockholders, divert our management's attention, cause us to incur debt or assume contingent liabilities and subject us to other risks.

We may engage in various acquisitions and strategic partnerships in the future, including licensing or acquiring complementary products, intellectual property rights, technologies or businesses. Any acquisition or strategic partnership may entail numerous risks, including:

- increased operating expenses and cash requirements;
- the assumption of indebtedness or contingent liabilities;
- the issuance of our equity securities which would result in dilution to our stockholders;
- assimilation of operations, intellectual property, products and product candidates of an acquired company, including difficulties associated with integrating new personnel;
- the diversion of our management's attention from our existing product candidates and initiatives in pursuing such an acquisition or strategic partnership;
- spend substantial operational, financial and management resources in integrating new businesses, technologies and products;
- retention of key employees, the loss of key personnel, and uncertainties in our ability to maintain key business relationships;
- risks and uncertainties associated with the other party to such a transaction, including the prospects of that party and their existing products or product candidates and regulatory approvals; and
- our inability to generate revenue from acquired intellectual property, technology and/or products sufficient to meet our objectives or even to offset the associated transaction and maintenance costs.

In addition, if we undertake such a transaction, we may incur large one-time expenses and acquire intangible assets that could result in significant future amortization expense.

We or the third parties upon whom we depend on may be adversely affected by natural disasters and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster.

Natural disasters could severely disrupt our operations and have a material adverse effect on our business, results of operations, financial condition and prospects. If a natural disaster, power outage or other event occurred that prevented us from using all or a significant portion of our headquarters, that damaged critical infrastructure, such as the manufacturing facilities on which we rely, or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible for us to continue our business for a substantial period of time. The disaster recovery and business continuity plans we have in place may prove inadequate in the event of a serious disaster or similar event. We may incur substantial expenses as a result of the limited nature of our disaster recovery and business continuity plans, which could have a material adverse effect on our business. For example, following Hurricane Maria, shortages in production and delays in a number of medical supplies produced in Puerto Rico resulted, and any similar interruption due to a natural disaster affecting us or any of our third-party manufacturers could materially delay our operations.

We expect to significantly expand our organization, including building sales and marketing capability and creating additional infrastructure to support our operations as a public company, and as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.

We expect to experience significant growth in the number of our employees and the scope of our operations, particularly in the areas of sales and marketing and finance and accounting. To manage our anticipated future growth, we must continue to implement and improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Due to our limited financial resources and our limited experience in managing such anticipated growth, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The expansion of our operations may lead to significant costs and may divert or stretch our management and business development resources in a way that we may not anticipate. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

Product liability lawsuits against us could cause us to incur substantial liabilities and could limit commercialization of any current or future product candidates that we may develop.

We will face an inherent risk of product liability exposure related to the testing of our current or future product candidates in human clinical trials and will face an even greater risk if we commercially sell any current or future product candidates that we may develop. Claims could also be asserted under the state consumer production acts. If we cannot successfully defend ourselves against claims that our current or future product candidates caused injuries, we could incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for any current or future product candidates that we may develop;
- injury to our reputation and significant negative media attention;
- withdrawal of clinical trial participants;
- significant costs to defend the related litigation;
- a diversion of management's time and resources;
- substantial monetary awards to trial participants or patients;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenue;
- a decline in our stock price; and
- the inability to commercialize any current or future product candidates that we may develop.

We do not yet maintain product liability insurance, and we anticipate that we will need to increase our insurance coverage when we begin clinical trials and if we successfully commercialize any product candidate. Insurance coverage is increasingly expensive. We may not be able to maintain product liability insurance coverage at a reasonable cost or in an amount adequate to satisfy any liability that may arise.

Our employees and independent contractors, including principal investigators, consultants, commercial collaborators, service providers and other vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could have an adverse effect on our results of operations.

We are exposed to the risk that our employees and independent contractors, including principal investigators, consultants, any future commercial collaborators, service providers and other vendors may engage in misconduct or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or other unauthorized activities that violate the laws and regulations of the FDA and other similar regulatory bodies, including those laws that require the reporting of true, complete and accurate information to such regulatory bodies; manufacturing standards; the U.S. federal and state fraud and abuse laws, data privacy and security laws and other similar non-United States laws; or laws that require the true, complete and accurate reporting of financial information or data. Activities subject to these laws also involve the improper use or misrepresentation of information obtained in the course of clinical trials, the creation of fraudulent data in our preclinical studies or clinical trials, or illegal misappropriation of product, which could result in regulatory sanctions and cause serious harm to our reputation. It is not always possible to identify and deter misconduct by employees and other third-parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. In addition, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and financial results, including, without limitation, the imposition of significant civil, criminal and administrative penalties, damages, monetary fines, disgorgement, possible exclusion from participation in Medicare, Medicaid and other United States federal healthcare programs or healthcare programs in other jurisdictions, integrity oversight and reporting obligations to resolve allegations of non-compliance, imprisonment, other sanctions, contractual damages, reputational harm, diminished profits and future earnings and curtailment of our operations, any of which could adversely affect our ability to operate our business and our results of operations.

Risks Related to Our Common Stock

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. If one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, our stock price may decline. If one or more of these analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which might cause our stock price and trading volume to decline.

Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant influence over matters subject to stockholder approval.

Based on the beneficial ownership of our common stock as of June 30, 2022, our executive officers, directors, holders of 5% or more of our capital stock and their respective affiliates beneficially owned approximately 60.0% of our outstanding common stock. As a result, these stockholders, if acting together, will continue to have significant influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, amendment of our organizational documents, any merger, consolidation or sale of all or substantially all of our assets and any other significant corporate transaction. The interests of these stockholders may not be the same as or may even conflict with your interests. For example, these stockholders could delay or prevent a change of control of our company, even if such a change of control would benefit our other stockholders, which could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company or our assets and might affect the prevailing market price of our common stock. The significant concentration of stock ownership may adversely affect the trading price of our common stock due to investors' perception that conflicts of interest may exist or arise.

Our ability to utilize our net operating loss carryforwards and certain other tax attributes may be limited.

Under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, if a corporation undergoes an "ownership change" (generally defined as a greater than 50 percentage point change (by value) in the ownership of its equity over a three year period), the corporation's ability to use its pre-change net operating loss carryforwards and certain other pre-change tax attributes to offset its post-change income may be limited. We may have experienced such ownership changes in the past, and we may experience ownership changes in the future as a result of subsequent shifts in our stock ownership, some of which are outside our control. Our gross operating losses and tax credits may also be impaired or restricted under state law. As of December 31, 2021, we had federal gross operating loss carryforwards of approximately $138.7 million, and state gross operating loss carryforwards of $113.6 million. Furthermore, our ability to utilize our NOLs or credits is conditioned upon our attaining profitability and generating the U.S. federal and state taxable income. As a result, the amount of the gross operating loss and tax credit carryforwards presented in our financial statements could be limited and may expire unutilized. Under current law, unused U.S. federal gross operating loss carryforwards generated in taxable years beginning after December 31, 2017 are not subject to expiration and may be carried forward indefinitely. For taxable years beginning after December 31, 2020, however, the deductibility of such U.S. federal net operating losses is limited to 80% of our taxable income in such taxable years.

Because we do not anticipate paying any cash dividends on our capital stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain.

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future. For a further description of our dividend policy, please refer to the section entitled "Dividend Policy."

We may be subject to securities litigation, which is expensive and could divert management attention.

The market price of our common stock may be volatile and, in the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

Our quarterly operating results may fluctuate significantly or may fall below the expectations of investors or securities analysts, each of which may cause our stock price to fluctuate or decline.

We expect our operating results to be subject to quarterly fluctuations. Our net loss and other operating results will be affected by numerous factors, including:

- variations in the level of expense related to the ongoing development of belzupacap sarotalocan or future development programs;
- results of clinical trials, or the addition or termination of clinical trials or funding support by us, or existing or future collaborators or licensing partners;
- our execution of any additional collaboration, licensing or similar arrangements, and the timing of payments we may make or receive under existing or future arrangements or the termination or modification of any such existing or future arrangements;
- any intellectual property infringement lawsuit or opposition, interference or cancellation proceeding in which we may become involved;
- additions and departures of key personnel;
- strategic decisions by us or our competitors, such as acquisitions, divestitures, spin-offs, joint ventures, strategic investments or changes in business strategy;
- if any of our product candidates receives regulatory approval, the terms of such approval and market acceptance and demand for such product candidates;
- regulatory developments affecting our product candidates or those of our competitors; and
- changes in general market and economic conditions, including inflationary pressures.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our common stock to fluctuate substantially. We believe that quarterly comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance.

Our amended and restated bylaws designate specific courts as the exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.

Pursuant to our amended and restated bylaws, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware is the sole and exclusive forum for state law claims for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, or other employees to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or our amended and restated certificate of incorporation or our amended and amended and restated bylaws (including the interpretation, validity or enforceability thereof) or (iv) any action asserting a claim that is governed by the internal affairs doctrine (the Delaware Forum Provision). The Delaware Forum Provision will not apply to any causes of action arising under the Securities Act or the Exchange Act. Our amended and restated bylaws will further provide that unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States shall be the sole and exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act (the Federal Forum Provision). In addition, our amended and restated bylaws provide that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock is deemed to have notice of and consented to the Delaware Forum Provision and the Federal Forum Provision; provided, however, that stockholders cannot and will not be deemed to have waived our compliance with the U.S. federal securities laws and the rules and regulations thereunder.

The Delaware Forum Provision and the Federal Forum Provision in our amended and restated bylaws may impose additional litigation costs on stockholders in pursuing any such claims. Additionally, these forum selection clauses in our amended and restated bylaws may limit our stockholders' ability to bring a claim in a judicial forum that they find favorable for disputes with us or our directors, officers or employees, which may discourage the filing of such lawsuits against us and our directors, officers and employees even though an action, if successful, might benefit our stockholders. In addition, while the Delaware Supreme Court ruled in March 2020 that federal forum selection provisions purporting to require claims under the Securities Act be brought in federal court are "facially valid" under Delaware law, there is uncertainty as to whether other courts will enforce our Federal Forum Provision. If the Federal Forum Provision is found to be unenforceable, we may incur additional costs associated with resolving such matters. The Federal Forum Provision may also impose additional litigation costs on stockholders who assert that the provision is not enforceable or invalid. The Court of Chancery of the State of Delaware and the federal district courts of the United States may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments may be more or less favorable to us than our stockholders.

If a court were to find either exclusive-forum provision in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur further significant additional costs associated with resolving the dispute in other jurisdictions, all of which could harm our business.

Anti-takeover provisions in our amended and restated Certificate of Incorporation and bylaws and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management and, therefore, decrease the trading price of our common stock.

Our fourth amended and restated certificate of incorporation and amended and restated bylaws contain provisions that could delay or prevent a change of control of our company or changes in our Board of Directors (the "Board") that our stockholders might consider favorable. Some of these provisions include:

- a Board divided into three classes serving staggered three-year terms, such that not all members of the Board will be elected at one time;
- a prohibition on stockholder action through written consent, which requires that all stockholder actions be taken at a meeting of our stockholders;
- a requirement that special meetings of the stockholders may be called only by the Board acting pursuant to a resolution approved by the affirmative vote of a majority of the directors then in office, and special meetings of stockholders may not be called by any other person or persons;
- advance notice requirements for stockholder proposals and nominations for election to our Board;
- a requirement that no member of our Board may be removed from office by our stockholders except for cause and, in addition to any other vote required by law, upon the approval of not less than two-thirds (2/3) of all outstanding shares of our voting stock then entitled to vote in the election of directors;

- a requirement of approval of not less than a majority of all outstanding shares of our voting stock to amend any bylaws by stockholder action and not less than two-thirds (2/3) of all outstanding shares of our voting stock to amend specific provisions of our certificate of incorporation; and
- the authority of the Board to issue preferred stock on terms determined by the Board without stockholder approval, which preferred stock may include rights superior to the rights of the holders of common stock.

In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporate Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. These anti-takeover provisions and other provisions in our fourth amended and restated certificate of incorporation and amended and restated bylaws could make it more difficult for stockholders or potential acquirers to obtain control of our Board or initiate actions that are opposed by the then-current Board and could also delay or impede a merger, tender offer or proxy contest involving our company. These provisions could also discourage proxy contests and make it more difficult for you and other stockholders to elect directors of your choosing or cause us to take other corporate actions you desire. Any delay or prevention of a change of control transaction or changes in our Board could cause the market price of our common stock to decline.

General Risks

We are subject to certain U.S. and foreign anti-corruption, anti-money laundering, export control, sanctions, and other trade laws and regulations. We can face serious consequences for violations.

Among other matters, the U.S. and foreign anti-corruption, anti-money laundering, export control, sanctions, and other trade laws and regulations, which are collectively referred to as Trade Laws, prohibit companies and their employees, agents, clinical research organizations, legal counsel, accountants, consultants, contractors, and other partners from authorizing, promising, offering, providing, soliciting, or receiving directly or indirectly, corrupt or improper payments or anything else of value to or from recipients in the public or private sector. Violations of Trade Laws can result in substantial criminal fines and civil penalties, imprisonment, the loss of trade privileges, debarment, tax reassessments, breach of contract and fraud litigation, reputational harm, and other consequences. We have direct or indirect interactions with officials and employees of government agencies or government-affiliated hospitals, universities, and other organizations. We also expect our non-U.S. activities to increase in time. We plan to engage third parties for clinical trials and/or to obtain necessary permits, licenses, patent registrations, and other regulatory approvals and we can be held liable for the corrupt or other illegal activities of our personnel, agents, or partners, even if we do not explicitly authorize or have prior knowledge of such activities.

Unfavorable global economic or political conditions could adversely affect our business, financial condition or results of operations.

Our results of operations could be adversely affected by general conditions in the global economy and in the global financial markets. For example, in 2008, the global financial crisis caused extreme volatility and disruptions in the capital and credit markets and the ongoing COVID-19 pandemic has caused significant volatility and uncertainty in the U.S. and international markets. See “Risks Related to our Business and Industry—The COVID-19 pandemic, or a similar pandemic, epidemic, or outbreak of an infectious disease may materially and adversely affect our business and our financial results and could cause a disruption to the development of our product candidates.” In addition, the current military conflict between Russia and Ukraine could disrupt or otherwise adversely impact our operations and those of third parties upon which we rely. Related sanctions, export controls or other actions that may be initiated by nations including the United States, the European Union or Russia (e.g., potential cyberattacks, disruption of energy flows, etc.), which could adversely affect our business and/or our supply chain, our CROs, CMOs and other third parties with which we conduct business. A severe or prolonged economic downturn or political unrest could result in a variety of risks to our business, including, weakened demand for our product candidates and our ability to raise additional capital when needed on acceptable terms, if at all. A weak or declining economy could also strain our suppliers, possibly resulting in supply disruption, or cause our customers to delay making payments for our services. Any of the foregoing could harm our business and we cannot anticipate all of the ways in which the current economic climate and financial market conditions could adversely impact our business.

Our employees, independent contractors, consultants, academic collaborators, partners and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.

We are exposed to the risk of employee fraud or other illegal activity by our employees, independent contractors, consultants, academic collaborators, partners and vendors. Misconduct by these parties could include intentional, reckless and/or negligent conduct that fails to comply with the laws of the FDA, the EMA and comparable foreign regulatory authorities, provide true, complete and accurate information to the FDA, the EMA and comparable foreign regulatory authorities, comply with manufacturing standards we have established, comply with healthcare fraud and abuse laws in the United States and similar foreign fraudulent misconduct laws, or report financial information or data accurately or to disclose unauthorized activities to us. If we obtain the FDA approval of any of our product candidates and begin commercializing those products in the United States, our potential exposure under such laws will increase significantly, and our costs associated with compliance with such laws are also likely to increase. These laws may impact, among other things, our current activities with principal investigators and research patients, as well as proposed and future sales, marketing and education programs. We have adopted a code of business conduct and ethics, but it is not always possible to identify and deter misconduct by our employees, independent contractors, consultants, academic collaborators, partners and vendors, and the precautions we take to detect and prevent such activities may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with these laws or regulations. If any actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could result in the imposition of civil, criminal and administrative penalties, damages, monetary fines, imprisonment, disgorgement, possible exclusion from participation in government healthcare programs, additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, contractual damages, reputational harm, diminished profits and future earnings and the curtailment of our operations.

We are an "emerging growth company" and a "smaller reporting company" and we cannot be certain if the reduced reporting requirements applicable to "emerging growth companies" and "smaller reporting companies" will make our common stock less attractive to investors.

We are an "emerging growth company" as defined in the JOBS Act. For as long as we continue to be an "emerging growth company," we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including (1) not being required to comply with the independent auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002 or Section 404, as amended, (2) reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and (3) exemptions from the requirements of holding nonbinding advisory stockholder votes on executive compensation and stockholder approval of any golden parachute payments not approved previously. In addition, as an "emerging growth company," we are only required to provide two years of audited financial statements and two years of selected financial data in our periodic reports.

We will remain an "emerging growth company" until the earlier of (i) the last day of the fiscal year (a) following the fifth anniversary of the closing of our IPO, (b) in which we have total annual gross revenue of at least $1.07 billion or (c) in which we are deemed to be a "large accelerated filer," which requires the market value of our common stock that is held by non-affiliates to exceed $700.0 million as of the prior June 30, and (ii) the date on which we have issued more than $1.0 billion in non-convertible debt during the prior three-year period.

Even after we no longer qualify as an "emerging growth company," we may still qualify as a "smaller reporting company," which would allow us to take advantage of many of the same exemptions from disclosure requirements, including not being required to comply with the independent auditor attestation requirements of Section 404 and reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our share price may be more volatile.

Under the JOBS Act, "emerging growth companies" can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have elected to take advantage of the benefits of this extended transition period. Our financial statements may therefore not be comparable to those of companies that comply with such new or revised accounting standards. Until the date that we are no longer an "emerging growth company" or affirmatively and irrevocably opt out of the exemption provided by Section 7(a)(2)(B) of the Securities Act, upon issuance of a new or revised accounting standard that applies to our financial statements and that has a different effective date for public and private companies, we will disclose the date on which adoption is required for non-emerging growth companies and the date on which we will adopt the recently issued accounting standard.

We are also a “smaller reporting company,” meaning that the market value of our stock held by non-affiliates is less than $700.0 million and our annual revenue is less than $100.0 million during the most recently completed fiscal year. We may continue to be a “smaller reporting company” until (i) the market value of our stock held by non-affiliates is less than $250.0 million or (ii) our annual revenue is less than $100.0 million during the most recently completed fiscal year and the market value of our stock held by non-affiliates is less than $700.0 million as of the prior June 30. If we are a “smaller reporting company” at the time we cease to be an “emerging growth company,” we may continue to rely on exemptions from certain disclosure requirements that are available to “smaller reporting companies.” Specifically, as a “smaller reporting company” we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K and, similar to emerging growth companies, “smaller reporting companies” have reduced disclosure obligations regarding executive compensation.

The market price of our stock may be volatile, and you could lose all or part of your investment.

The trading price of our common stock is highly volatile and subject to wide fluctuations in response to various factors, some of which we cannot control. As a result of this volatility, you may not be able to sell their common stock at or above the price you paid for your common stock. The market price for our common stock may be influenced by many factors, including the other risks described in the section of this Annual Report on Form 10-K entitled “Risk Factors” and the following:

- results of preclinical studies and results or enrollment of clinical trials of belzupacap sarotalocan or our future product candidates, or those of our potential future competitors or our existing or future collaborators;
- the impact of the COVID-19 pandemic on our employees, trials, collaboration partners, suppliers, our results of operations, liquidity and financial condition;
- regulatory or legal developments in the United States and other countries, especially changes in laws or regulations applicable to our product candidates;
- the success of future competitive products or technologies;
- introductions and announcements of new products by us, our future commercialization partners, or our competitors, and the timing of these introductions or announcements;
- actions taken by regulatory agencies with respect to our products, clinical trials, manufacturing process or sales and marketing terms;
- actual or anticipated variations in our financial results or those of companies that are perceived to be similar to us;
- the success of our efforts to acquire or in-license additional technologies, products or product candidates;
- developments concerning any future collaborations, including but not limited to those with our sources of manufacturing supply and our commercialization partners;
- market conditions in the pharmaceutical and biotechnology sectors;
- announcements by us or our competitors of significant acquisitions, strategic collaborations, joint ventures or capital commitments;
- developments or disputes concerning patents or other proprietary rights, including patents, litigation matters and our ability to obtain patent protection for belzupacap sarotalocan or our future product candidates and products;
- our ability or inability to raise additional capital and the terms on which we raise it;
- the recruitment or departure of key personnel;
- changes in the structure of healthcare payment systems;
- actual or anticipated changes in earnings estimates or changes in stock market analyst recommendations regarding our common stock, other comparable companies or our industry generally;
- our failure or the failure of our competitors to meet analysts’ projections or guidance that we or our competitors may give to the market;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- announcement and expectation of additional financing efforts;
- speculation in the press or investment community;
- trading volume of our common stock;
- sales of our common stock by us or our stockholders;
- the concentrated ownership of our common stock;
- changes in accounting principles;
- terrorist acts, acts of war or periods of widespread civil unrest;
- natural disasters, pandemics and other calamities; and
- general economic, industry and market conditions.

In addition, the stock market in general, and the markets for pharmaceutical, biopharmaceutical and biotechnology stocks in particular, have experienced extreme price and volume fluctuations that have been often unrelated or disproportionate to the operating performance of the issuer. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our actual operating performance. The realization of any of the above risks or any of a broad range of other risks, including those described in this "Risk Factors" section, could have a dramatic and adverse impact on the market price of our common stock.

In the past, securities class action litigation has often been brought against public companies following declines in the market price of their securities. This risk is especially relevant for biopharmaceutical companies, which have experienced significant stock price volatility in recent years. If we face such litigation, it could result insubstantial costs and a diversion of management's attention and our resources, which could harm our business.

We have incurred and will continue to incur increased costs as a result of operating as a public company, and our management devotes substantial time to compliance initiatives.

As a public company, and particularly after we are no longer an "emerging growth company," we will incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act and rules implemented by the SEC and Nasdaq have imposed various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and corporate governance practices. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, we expect that these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance. We cannot predict or estimate the amount or timing of additional costs we may incur to respond to these requirements. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our Board, our Board committees or as executive officers. The increased costs may require us to reduce costs in other areas of our business or increase the prices of our products once commercialized. Moreover, these rules and regulations are often subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices.

Pursuant to Section 404, we will be required to furnish a report by our management on our internal control over financial reporting, including an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. However, while we remain an "emerging growth company," we will not be required to include an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. In addition, for as long as we are a "smaller reporting company" with less than $100 million in annual revenue, we would be exempt from the requirement to obtain an external audit on the effectiveness of internal control over financial reporting provided in Section 404(b) of the of the Sarbanes-Oxley Act of 2002. To achieve compliance with Section 404 within the prescribed period, we will be engaged in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. Despite our efforts, there is a risk that neither we nor our independent registered public accounting firm will be able to conclude within the prescribed timeframe that our internal control over financial reporting is effective as required by Section 404. This could result in an adverse reaction in the financial markets due to a loss of confidence in the reliability of our financial statements. In additional, if we are not able to continue to meet these requirements, we may not be able to remain listed on Nasdaq.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.

We are subject to the periodic reporting requirements of the Exchange Act. We have designed our disclosure controls and procedures to reasonably assure that information we must disclose in reports we file or submit under the Exchange Act is accumulated and communicated to management, and recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC.

However, any disclosure controls and procedures or internal controls and procedures, no matter how well-conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system will be met. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected.

Global economic uncertainty and unfavorable global economic conditions caused by political instability, changes in trade agreements and conflicts, such as the conflict between Russia and Ukraine, could adversely affect our business, financial condition, results of operations or prospects.

Our business, financial condition, results of operations or prospects could be adversely affected by general conditions in the global economy and in the global financial markets. A severe or prolonged economic downturn, increased inflation, economic uncertainties in various global markets caused by political instability and conflict, such as the Russia-Ukraine conflict, or additional global financial crises, could result in a variety of risks to our business, including weakened demand for our product candidates, if approved, or our inability to raise additional capital when needed on acceptable terms, if at all. A weak or declining economy could also strain our suppliers, possibly resulting in supply disruption. Any of the foregoing could harm our business and we cannot anticipate all of the ways in which the current economic climate and financial market conditions could adversely impact our business.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

(a) Recent Sales of Unregistered Equity Securities

None.

(b) Use of Proceeds from Initial Public Offering of Common Stock

On November 2, 2021, we completed our initial public offering, or the IPO, in which we issued and sold 5,400,000 shares of our common stock at a public offering price of $14.00 per share. We received net proceeds from the IPO of $67.8 million, after deducting underwriters' discounts, commissions and estimated offering-related costs. In connection with the IPO, we granted the underwriters a 30-day option to purchase an additional 810,000 shares. On November 8, 2021, the underwriters exercised the option in full and we issued 810,000 shares of common stock for aggregate net proceeds of $10.5 million, after deducting underwriters' discounts and commissions of $0.8 million.

The offer and sale of all of the shares of our common stock in the IPO were registered under the Securities Act pursuant to a registration statement on Form S-1, as amended (File No. 333-260156), which was declared effective by the SEC on October 28, 2021. Cowen and Company, LLC, SVB Leerink LLC, Evercore Group L.L.C. and BTIG, LLC acted as underwriters for the IPO.

No expenses incurred by us in connection with the IPO were paid directly or indirectly to (i) any of our officers or directors or their associates, (ii) any persons owning 10% or more of any class of our equity securities, or (iii) any of our affiliates, other than payments in the ordinary course of business to officers for salaries and to non-employee directors as compensation for board or board committee service.

There has been no material change in the planned use of proceeds from the IPO from those disclosed in the IPO prospectus. We plan to invest the funds received in cash equivalents and other marketable securities in accordance with our investment policy.

(c) Issuer Purchases of Equity Securities

None.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

Exhibit Number	Description
3.1	Tenth Amended and Restated Certificate of Incorporation of Registrant, as currently in effect (incorporated by reference to Exhibit 3.1 of the Registrants' Annual Report on Form 10-K (File No. 001-40971)).
3.2	Amended and Restated Bylaws of Registrant, as currently in effect (incorporated by reference to Exhibit 3.2 of the Registrants' Annual Report on Form 10-K (File No. 001-40971)).
4.2	Fifth Amended and Restated Investors' Rights Agreement (Incorporated by reference to Exhibit 4.2 to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-260156)).
10.1*	Lease Agreement, between Registrant and Ice Box, LLC, dated as of May 16, 2022.
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*#	Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Filed herewith.

These certifications are furnished to the SEC pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, except as shall be expressly set forth by specific reference in such filing.

SIGNATURES

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 thereunto duly authorized.

Aura Biosciences, Inc.

Date: August 11, 2022

By: /s/ Elisabet de los Pinos
Elisabet de los Pinos
President and Chief Executive Officer

Date: August 11, 2022

By: /s/ Julie Feder
Julie Feder
Chief Financial Officer

LEASE BETWEEN

AURA BIOSCIENCES, INC., AS TENANT AND

ICE BOX, LLC, AS LANDLORD

80 GUEST STREET, BRIGHTON, MA

TABLE OF CONTENTS

PAGE

L E A S E

THIS LEASE is dated as of May 13, 2022 (the "**Effective Date**"), between the Landlord and the Tenant named below, and is of space in the Building described below.

ARTICLE 1
BASIC DATA; DEFINITIONS

1.1 Basic Data. Each reference in this Lease to any of the following terms shall be construed to incorporate the data for that term set forth in this Section:

Landlord: ICE BOX, LLC, a Massachusetts limited liability company

Landlord's Notice Address: c/o NB Development Group, 221 N. Beacon Street, Brighton, MA 02135, Attn: James Halliday

Landlord's Payment Address:

By Wire:
Bank:
ABA#:
Account# :
Account Name:

By Mail:
Ice Box LLC
221 North Beacon Street Brighton, MA
02135

Tenant: AURA BIOSCIENCES, INC., a Delaware corporation

Tenant's Notice Address: (a) Prior to the Tenant Occupancy Date:
Aura Biosciences, Inc. 85 Bolton Street
Cambridge, MA 02140 Attn: Julie Feder

With Copies to:

(b) After the Tenant Occupancy Date: Aura Biosciences, Inc.
80 Guest Street
Brighton, MA 02135 Attn: Julie Feder

Guarantor: None.

Property: The land located in Brighton, Massachusetts together with the buildings and other improvements thereon known as 80 Guest Street, Brighton, Massachusetts 02135 located in the Complex and referred to as "C3 Parcel" on the site plan attached hereto as **Exhibit B**.

Building: The multi-story, mixed use building on the Property and containing approximately 246,405 rentable square feet (exclusive of the Rink Building), as the same may be altered, expanded, reduced or otherwise changed by Landlord from time to time.

Premises: Agreed to be 29,836 rentable square feet consisting of the entire fifth (5^{th}) floor of the Building and approximately as shown on the location plan attached hereto as **Exhibit A**.

Basic Rent: The Basic Rent, net of all Additional Rent, is as follows:

RENTAL PERIOD	RENTAL RATE PER RSF	ANNUAL BASIC RENT	MONTHLY PAYMENT
First Lease Year	$103.00	$3,073,108.00	$256,092.33
Second Lease Year	$106.09	$3,165,301.23	$263,775.10
Third Lease Year	$109.27	$3,260,179.72	$271,681.64
Fourth Lease Year	$112.55	$3,358,041.80	$279,836.82
Fifth Lease Year	$115.93	$3,458,887.48	$288,240.62
Sixth Lease Year	$119.41	$3,562,716.76	$296,893.06
Seventh Lease Year	$122.99	$3,669,529.64	$305,794.14
Eighth Lease Year	$126.68	$3,779,624.48	$314,968.71
Ninth Lease Year	$130.48	$3,893,001.28	$324,416.77
Tenth Lease Year	$134.38	$4,009,361.68	$334,113.47

Lease Year: Each period of twelve (12) consecutive months, commencing on the Commencement Date and each successive twelve (12) month period, except that if the Commencement Date shall occur on a date other than the first day of a month, then the first Lease Year shall include the period from the Commencement Date to the first day of the following month and the twelve (12) calendar months thereafter.

Commencement Date: August 1, 2022. Promptly upon the occurrence of the Commencement Date, Landlord and Tenant shall execute and deliver a letter designating the Commencement Date substantially in the form attached hereto as **Exhibit E**, but the failure by either party to execute and deliver such a letter shall have no effect on the Commencement Date, as hereinabove determined.

Tenant's Pro Rata Share of the Office Portion: For purposes of calculating Tenant's payments with respect to Taxes and Building Operating Expenses, Tenant's Pro Rata Share shall mean the fraction, expressed as a percentage, the numerator of which shall be the rentable square

feet in the Premises and the denominator of which shall be total rentable square feet of the Office Portion of the Building.

Tenant's Laboratory Share: For purposes of calculating Tenant's payments with respect to the Laboratory Operating Expenses associated with the Laboratory Portion of the Premises, Tenant's Laboratory Share shall mean the fraction, expressed as a percentage, the numerator of which shall be the rentable square feet of the Premises designed for laboratory use (as determined based on Tenant's final as-built interior laboratory construction plans for the Premises approved by Landlord) and the denominator of which shall be total rentable square feet of the Laboratory Portion of the Building.

Letter of Credit: Seven Hundred Sixty Eight Thousand Two Hundred Seventy Six and 99/100 Dollars ($768,276.99) to be held and disposed of as provided in **Section 14.8**.

Term: The period commencing on the Commencement Date and expiring at 12:00 a.m. on the last day of the tenth (10^{th}) Lease Year. The Term shall include any extension thereof that is expressly provided for by this Lease and that is effected strictly in accordance with this Lease; if no extension of the Term is expressly provided for by this Lease, no right to extend the Term shall be implied by this provision.

Initial Commercial General Liability Insurance: $3,000,000 per occurrence/
$5,000,000 aggregate (combined single limit) for property damage, bodily injury or death.

Permitted Use: The Premises are to be used and occupied by Tenant solely for the purpose of general office and research and development uses, including a biotechnical and Uniform Building Code ("**UBC**") "B" laboratory use (provided that no laboratory classified as a BSL-3 or BSL-4 or a UBC "H" use shall be permitted). The use of the Premises shall be in conformity with all applicable Laws, including any hazardous waste or medical waste rules and regulations promulgated by Landlord or any applicable governmental authority.

Landlord's Contribution: As defined on **Exhibit D** attached hereto.

Office Portion: That portion of the Building located at and above the ground floor of the Building which is programmed for and serving office uses (i.e. excluding the Parking Garage and the Laboratory Portion and Retail Portion).

Retail Portion: The portion of the Building located on the ground floor (i.e. excluding the Parking Garage, the Laboratory Portion and the Office Portion).

Laboratory Portion: That portion of floors four (4), five (5) and six (6) of the Building which is leased to tenants for laboratory uses (i.e., excluding the Parking Garage, the Office Portion and the Retail Portion). The Laboratory Portion shall initially be designated as fifty percent (50%) of the floor area on each of floors four (4), five (5) and six (6) of the Building, subject to adjustment based upon final as-built tenant construction plans for those floors in the Building.

Rink Building: The portion of the connected buildings on the Property that contains the

hockey rink and which consists of the ice area, boards, benches and entries thereto.

Parking Garage: The three-level, podium style parking garage at the Property.

Complex: The Building, Parking Garage and the adjacent building on the Property referred to as the "Rink Building," and all common areas and other improvements now or hereafter constructed on the Property, as the same may be altered, expanded, reduced or otherwise changed from time to time, subject to the terms and conditions of this Lease.

Boston Landing Project: That certain development project known as "Boston Landing," containing the Complex and the additional parcels of land (together with all buildings, structures and other improvements constructed or to be constructed from time to time thereon) shown on the site plan attached hereto as **Exhibit B**.

Comparable Buildings: Shall mean first class, mixed use office and laboratory buildings in the Longwood, Kenmore, Allston, Brighton, West Cambridge and Watertown submarkets (including, but not limited to, the Boston Landing Project) which have services, systems and facilities comparable to the Building.

Declaration: That certain Declaration of Covenants, Easements and Restrictions for Boston Landing Boston (Brighton), Massachusetts, dated as of April 14, 2016 and recorded with the Suffolk County Registry of Deeds in Book 55999, Page 85, as the same may be further amended from time to time. Landlord represents and warrants to Tenant that the Declaration is in full force and effect, and Landlord is not in default in the performance of its obligations under the Declaration, and that this Lease shall not be subject to any future amendments which (i) are inconsistent with any of Tenant's express rights under this Lease, (ii) which materially adversely affect the use and occupancy of the Premises by Tenant, or (iii) increase any obligations of Tenant as under the Lease (other than to a de minimis extent).

1.2 Additional Definitions. When used in Lease, the capitalized terms set forth below shall bear the meanings set forth below.

Adequate Assurance: As defined in **Section 14.1**.

Adequate Assurance of Future Performance: As defined in **Section 14.1**. **Additional Rent**: All charges and sums payable by Tenant as set forth in this Lease, other than and in addition to Basic Rent.

Affiliate: With respect to Landlord or Tenant, as the case may be, a Person or Persons directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Landlord or Tenant. The term "control" as used in the immediately preceding sentence, means, with respect to a Person that is a corporation, the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation and, with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

Alterations: As defined in **Section 5.3**.

Bankruptcy Code: As defined in **Section 14.1**.

Base Building: Shall mean all of the Structural Elements (as hereinafter defined) of the Building, the roof and roof membrane, the common building and core facilities of the Building, and the Base Building Systems (as hereinafter defined) serving the Building, but shall not include any Improvements relating to the Premises (whether existing or constructed by Landlord or Tenant), Alterations, the distribution portions of Base Building Systems which exclusively serve the Premises (whether located in the Premises or other areas of the Building), or other fixtures or personal property installed by or on behalf of Tenant or any party claiming by, through or under Tenant.

Laboratory Systems: Shall mean the HVAC system (including outside air handling units, chiller and exhaust fans and risers), laboratory waste water system, the laboratory exhaust facilities and equipment (including the laboratory exhaust energy recovery unit and exhaust riser), boilers, and hot water and chilled water distribution systems (including pumps and risers), electrical panel and facilities, water heaters and risers, fire protection and suppression system for the laboratory areas, water service to the Chemical Storage Room, louvers and mechanical rooms serving the Laboratory Portion, and other common service systems exclusively serving the Laboratory Portion of the Building and whether or not such Laboratory Systems are shared (or capable of being shared) by tenants or other occupants of the Laboratory Portion of the Building. As of the Commencement Date, the Laboratory Systems include, without limitation, the following: (i) ph Neutralization Tank (as hereinafter defined) and ph Neutralization room, (ii) RO/DI system, (iii) vacuum equipment and compressed air, (iv) laboratory waste water treatment system, (v) Chemical Storage Room, (vi) laboratory venting equipment and systems (including central exhaust unit supply and exhaust ductwork), (vii) air handling units (for supply air) on floors four (4), five (5) and six (6) of the Building, (viii) laboratory exhaust energy recovery unit, including a new exhaust riser for the Laboratory Portion, (ix) an air chiller to accommodate laboratory loads, (x) two (2) boilers and hot water distribution for on-floor laboratory use, (xi) chilled water distribution for on-floor laboratory and future connections for laboratory floor supplemental cooling for the Laboratory Portion, and (xii) water heaters and risers for non- potable and tempered water loop.

Base Building Systems: Shall mean the mechanical, gas, electrical, sanitary, heating, air conditioning, ventilating, elevator, plumbing, fire control and suppression, sprinkler/life safety and security systems (to the extent installed by Landlord, exclusive of any security system installed exclusively for Tenant) and other common service systems of the Building, excluding the Laboratory Systems.

Brokers: Jones Lang LaSalle.

Building Operating Expenses: As defined in **Section 9.1**.

Business Day: All days except Saturdays, Sundays, New Year’s Day, Martin Luther King Day, Memorial Day, Presidents Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day, Christmas Day (and the following day when any such day occurs on Sunday and the prior day when any such day occurs on a Saturday).

Common Facilities: As defined in **Section 2.2**. **Default Interest Rate**: As

defined in **Section 3.1(a)**.

Emergency: Any threat of immediate injury or damage to persons or property or the immediate imposition of a civil or criminal fine or penalty.

Environmental Laws: Any federal, state and/or local statute, ordinance, bylaw, code, rule and/or regulation now or hereafter enacted, pertaining to any aspect of the environment or human health, including, without limitation, Chapter 21C, Chapter 21D, and Chapter 21E of the General Laws of Massachusetts and the regulations promulgated by the Massachusetts Department of Environmental Protection, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.,* the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.,* the Toxic Substances Control Act, 15
U.S.C. §2061 *et seq.,* the Federal Clean Water Act, 33 U.S.C. §1251, and the Federal Clean Air Act, 42 U.S.C. §7401 *et seq*.

Expense Charges: The Additional Rent payable by Tenant pursuant to **Article 8** and
Article 9 of this Lease.

Event of Bankruptcy: As defined in **Section 14.1**. **Event of Default**: As

defined in **Section 14.1**.

Force Majeure: Collectively and individually, strikes, lockouts or other labor trouble, fire or other casualty, acts of God, governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, unusually adverse weather conditions, fire or other casualty, acts of terrorism or bioterrorism, civil commotion, or any other cause, whether similar or dissimilar, beyond the reasonable control of the party required to perform an obligation.

Holder: As defined in **Section 13.1**.

Hazardous Materials: Shall mean chemicals, contaminants, pollutants, flammables, explosives, materials, wastes or other substances listed, defined, determined or identified as hazardous or toxic under, or regulated by reason of its impact or potential impact on humans, animals and/or the environment under any Environmental Laws or otherwise controlled pursuant to any Environmental Laws, including, without limitation, any “oil,” “hazardous material,” “hazardous waste,” “hazardous substance” or “chemical substance or mixture”, as the foregoing terms (in quotations) are defined in any Environmental Laws.

Improvements: As defined in **Section 10.2**.

Laboratory Operating Expenses: As defined in **Section 9.1**. **Land**: The land that

constitutes a portion of the Property.

Landlord’s Restoration Work: As defined in **Section 11.2**.

Laws: All present and future statutes, laws, codes, regulations, ordinances, orders, rules, bylaws, administrative guidelines, requirements, directives and actions of any federal, state or local governmental or quasi-governmental authority, and other legal requirements of whatever kind or nature that are applicable to the Property, Landlord or Tenant, including, without limitation, all Environmental Laws and the Americans With Disabilities Act of 1990 (including the Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities), and any amendments, modifications or changes to any of the foregoing.

Mortgage: As defined in **Section 13.1**. **Operating Year**: As defined

in **Section 9.1**.

Original Tenant: the originally named Tenant, Aura Biosciences, Inc., a Delaware corporation

Person: A natural person, a partnership, a joint venture, a corporation, a limited liability company, a trust and any other form of business or legal association or entity.

Recapture Date: As defined in **Section 6.4**.

Rules and Regulations: As defined in **Section 2.2**. **Specified Restoration Work**:

As defined in **Section 11.2**.

Structural Elements: Shall mean the structural (i.e., load bearing) components of the Building, including the roof, the footings, foundations, exterior structural walls, interior structural columns and other load-bearing elements of the Building (including without limitation floor slabs).

Successor: As defined in **Section 13.1**.

Tangible Net Worth: Shall mean total assets minus intangible assets (including, without limitation, goodwill, patents and copyrights) and total liabilities, all as calculated in accordance with generally accepted accounting principles.

Taxes: As defined in **Section 8.1**. **Tax Year**: As defined in

Section 8.1.

Tenant's Removable Property: As defined in **Section 5.3**. **Tenant's Restoration Work**: As

defined in **Section 11.2**.

1.3 **Enumeration of Exhibits**. The following Exhibits are a part of this Lease, are incorporated herein by reference attached hereto, and are to be treated as a part of this Lease for all purposes. Undertakings contained in such Exhibits are agreements on the part of Landlord and Tenant, as the case may be, to perform the obligations stated therein.

Exhibit A - Location Plan of the Premises

Exhibit B – Site Plan of Boston Landing Project Exhibit C – Reserved
Exhibit D – Tenant's Work Letter Exhibit E -
Commencement Date Letter
Exhibit F – Building Operating Expenses and Laboratory Operating Expenses
Exhibit G - Rules and Regulations Exhibit H – Form of Letter
of Credit Exhibit I – Tenant's Removable Property Exhibit J –
HVAC Specifications

ARTICLE 2
PREMISES AND APPURTENANT RIGHTS

2.1 **Lease of Premises**. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the Term and upon the terms and conditions hereinafter set forth.

2.2 **Appurtenant Rights and Reservations**

(a) Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use, and permit its invitees to use in common with Landlord and others, (i) public or common lobbies, hallways, stairways, elevators and common walkways necessary for access to the Building and the Premises; (ii) the loading areas, pedestrian sidewalks, landscaped areas, trash enclosures and other areas or facilities, if any, serving the Building and designated by Landlord from time to time for the non-exclusive use of tenants and other occupants of the Building, including, without limitation, the podium area of the Building (the **"Common Facilities"**); and (iii) subject to the terms of this Lease, the Laboratory Systems; but such rights shall always be subject to reasonable rules and regulations from time to time established by Landlord and uniformly enforced against all laboratory tenant and occupants of the Building, pursuant to **Section 15.7** (the **"Rules and Regulations"**) and to the right of Landlord to designate and change from time to time such areas and facilities so to be used. Subject to applicable Laws and the terms and conditions of the Declaration (including the Boston Landing Rules and Regulations), Tenant shall have, as appurtenant to the Premises, the non-exclusive right, in common with Landlord and others entitled thereto, to use, and to permit its invitees to use, the Common Areas and Facilities (as defined in the Declaration) of the Boston Landing Project. Notwithstanding anything in this Lease to the contrary, Landlord shall not during the Term reduce access to, reconfigure, or otherwise modify the Common Facilities in a manner that unreasonably interferes with Tenant's use and enjoyment of, and access to, the Premises. In the event of a conflict between any Rules and Regulations established by Landlord and the terms of this Lease, the terms of this Lease shall control.

(b) Excepted and excluded from the Premises and the Common Facilities are the floor slab, demising walls and perimeter walls and exterior windows

(except the inner surfaces of each thereof), and any space in the Premises used for shafts,

stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other Building facilities, but the entry doors (and related glass and finish work) to the Premises are a part thereof. Landlord shall have the right to place in the Premises, but in such manner as to reduce to a minimum interference with Tenant's use of the Premises and not to reduce the usable square feet of the Premises (except to a de minimis extent) or otherwise materially adversely affect Tenant's use and occupancy of the Premises for the purpose contemplated under this Lease, utility lines, equipment, stacks, pipes, conduits, ducts and the like. In the event that Tenant shall install any hung ceilings or walls in the Premises, Tenant shall install and maintain, as Landlord may require, proper access panels therein to afford access to any facilities above the ceiling or within or behind the walls. Tenant shall be entitled to install any such ceilings or walls only in compliance with the other terms and conditions of this Lease. Tenant shall have no right to access and use the fan rooms, janitorial, electrical, telephone and telecommunications closets, conduits, risers, plenum spaces and other service areas of the Building without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Tenant may install (i) signs or lettering on or adjacent to the entry doors to the Premises, and (ii) identification signage for Tenant in the elevator lobbies on floors on which the Premises is located, provided such signs conform to sign standards for the Building adopted by Landlord in its reasonable discretion and Tenant has submitted to Landlord a plan or sketch in reasonable detail (showing, without limitation, size, color, location, materials and method of affixation) of the sign to be placed on such entry doors. Except for the foregoing signage, Tenant will not place on the exterior of the Premises (including both interior and exterior surfaces of doors and interior surfaces of windows) or on any part of the Building outside the Premises, any sign, symbol, advertisement or the like visible to public view outside of the Premises. If and only so long as Landlord maintains a tenant directory in the main lobby of the Building, Landlord shall cause Tenant's name to be listed on the main lobby tenant directory; provided, however, that any changes or replacements of such lobby listing after the initial installation shall be at Tenant's expense.

(d) The designation or use from time-to-time of portions of the Property or the Complex as Common Facilities, Base Building Systems or Laboratory Systems shall not restrict Landlord's use of such areas for buildings, structures and/or for retail or such other purposes in connection with and consistent with the operations of the Property and the Complex as Landlord shall reasonably determine, including, without limitation, the expansion or remodeling of the Building to include one or more additional stores and restaurants, residential or other units (on the present and/or additional levels), Landlord hereby reserving the unrestricted right to build, add to, subtract from, lease, license, relocate and/or otherwise use (temporarily and/or permanently), any buildings, kiosks, other structures, parking areas, roadways or other areas or facilities anywhere upon the Building, the Property or the Complex for retail or such other purposes as Landlord shall reasonably determine, provided Landlord does not in the exercise of such right cause an unreasonable interference under the circumstances with the access to the Premises, the Parking Garage, and/or Tenant's use of the Premises and/or the Parking Garage. There shall be a commensurate adjustment in Tenant's Pro Rata Shares set forth in Section 1.1 as

a result of any expansion or contraction of the rentable square footage of the Building or Laboratory Portion.

2.3 Parking.

(a) Subject to the terms and conditions of this section 2.3, Landlord shall provide or shall cause the Parking Garage operator to provide to Tenant monthly parking passes in the Parking Garage for up to sixty (60) unreserved parking spaces (calculated at a ratio of 2.0 unreserved parking spaces per 1,000 rentable square feet of the Premises) (the "**Tenant's Parking Ratio**"), for the parking of passenger automobiles on a non-exclusive, unassigned, first-come, first-served basis, in the Parking Garage at the Property. Tenant shall pay, as Additional Rent, the market rate for such parking spaces from time to time in effect at the Parking Garage (which rate is currently $275 per parking pass per month, subject to increase from time to time during the Term). Tenant has elected to initially subscribe for forty (40) unreserved parking spaces as of the Commencement Date. Thereafter, Tenant may elect to increase the number of parking spaces that Tenant subscribes for up to but not to exceed the Tenant's Parking Ratio set forth in this Section 2.3. If by the date that is eighteen (18) months following the Commencement Date, Tenant has not elected to subscribe for the entire Tenant's Parking Ratio, then Tenant's Parking Ratio will be permanently reduced to the number of parking spaces that Tenant has elected to subscribe for as of such date. In the event that the rentable square footage of the Premises increases or decreases at any time during the Term, the maximum number of parking passes provided to Tenant hereunder shall be increased or decreased based upon the Tenant's Parking Ratio. The parking spaces in the Parking Garage subscribed for by Tenant are referred to herein as "**Tenant's Parking Spaces**". The Tenant's Parking Spaces granted herein are for use by employees of Tenant and other occupants of the Premises, Tenant's contractors, agents and invitees, are non- transferable (other than to an assignee or subtenant or other occupant permitted to occupy and use the Premises pursuant to the applicable provisions of this Lease).

(b) Unless otherwise determined by Landlord or the operator of such garage (the "**Garage Operator**"), the Parking Garage is to be operated on a self-parking basis and Tenant's parking shall be on an unreserved basis. Landlord agrees that, in accordance with the Transportation Access Plan Agreement or any LEED certification pursued from time to time by Landlord, the Parking Garage or the Building will provide onsite, secure bicycle storage and shower/changing rooms in the Fitness Facility and, subject to applicable Laws, the Parking Garage will provide priority parking for car/van pools, hybrids, small cars, mopeds and motorbikes. Landlord reserves the right to institute, expand or withdraw a valet or stacked parking system or to institute other reasonable parking controls, rules or regulations, at any time and in its reasonable discretion provided the same are not inconsistent with Tenant's rights under this Lease.

(c) Landlord shall have the absolute right (a) to allocate and assign parking spaces among some or all of the tenants of the Property (and Tenant shall comply with any such parking assignments), including, without limitation, the right to designate a reserved area of the Parking Garage as a valet area for the customers and

visitors to the Retail Portion of the Building provided that the same does decrease the number of

monthly parking contracts that Tenant is entitled to under this **Section 2.3**, (b) to reconfigure the parking area, and/or (c) to modify the ingress to and egress from the Parking Garage as Landlord shall deem appropriate, as long as reasonable access to such area is maintained after such modification is completed. Landlord or the Garage Operator shall have the right to temporarily close all or any portion of the Parking Garage for the purpose of maintaining, repairing, restoring, altering or improving same, provided that Landlord exercises diligent efforts to reopen such areas of the Parking Garage as soon as reasonably possible in light of the nature of repairs or other work being performed in the Parking Garage.

(d) Landlord shall have no obligation to monitor the use of such parking facility, nor shall Landlord be responsible for any loss or damage to any vehicle or other property or for any injury to any person. Tenant and its employees shall observe reasonable safety precautions in the use of the Parking Garage and shall at all times abide by all reasonable rules and regulations of uniform applicability to the users of the Parking Garage from time to time established by Landlord or the Garage Operator governing the use thereof. Except to the extent of negligence or willful acts, neither the Landlord nor the Garage Operator assumes any responsibility whatsoever for loss or damage due to fire or theft or otherwise to any automobile or to any personal property therein, however caused, and Tenant agrees, upon written request from the Landlord, from time to time, to notify its officers, employees and agents then using any of the parking privileges provided for herein, of such limitation of liability. Tenant further acknowledges and agrees that a license only is hereby granted, and no bailment is intended or shall be created. Tenant's employees having the use of monthly parking passes shall be required to display identification or parking sticker at all times in all vehicles parked in the garage. Any vehicle not displaying such a sticker may be towed away at the vehicle owner's expense in accordance with the garage rules and regulations. In addition, Landlord's and Tenant's use of the garage shall be subject to all Laws and the permits and approvals issued in connection with the development of the Boston Landing Project.

(e) Notwithstanding Tenant's parking rights under this Lease, in accordance with the Transportation Access Plan Agreement entered into by Landlord and the Boston Transportation Department in connection with the development of the Property, Tenant shall exercise reasonable efforts to (i) promote and encourage employees of Tenant and other occupants of the Premises to rideshare or carpool, as part of which Tenant shall consider providing subsidized parking rates and other incentives for rideshare or carpool vehicles and participating in the MassRides car sharing program, (ii) promote and encourage employees to use public transportation to commute to the Premises, including providing on-line and on-site or payroll deduction transit pass sales and providing subsidized transit pass rates, (iii) participate in the MBTA Corporate T-Pass Program, and (iv) provide employees with information on bus, subway and commuter rail routes and schedules. Landlord encourages Tenant and all tenants of the Boston Landing Project to reasonably consider offering full-time and part-time employees a subsidy for transit passes and to become members of the local Transportation Management Association. Tenant shall reasonably cooperate with Landlord (at no cost to Tenant) in programs and other activities initiated by Landlord to comply with Landlord's obligations under the Transportation Agreements.

2.4 **Shuttle Service**. Subject to weather and other force majeure delays, Landlord will provide, as part of Building Operating Expenses, shuttle service on Business Days between the Boston Landing Project and Harvard Square and Kenmore Square for the general use of all tenants and occupants of the Boston Landing Project, subject to reasonable modifications from time to time in Landlord's reasonable discretion. The hours, frequency and routes of shuttle services shall be subject to reasonable modification by Landlord in Landlord's reasonable discretion as demand for use of such shuttle service changes during the Term and subject to any applicable provisions of the Declaration.

ARTICLE 3 BASIC RENT

3.1 **Payment**.

(a) Tenant agrees to pay the Basic Rent and Additional Rent to Landlord, or as directed by Landlord, commencing on the Commencement Date, without offset, abatement (except as provided in **Section 11.3**), deduction or demand, except as otherwise expressly provided in this Lease. Basic Rent shall be payable in equal monthly installments, in advance, on the first day of each and every calendar month during the Term of this Lease, to Landlord at Landlord's Payment Address or at such other place as Landlord shall from time to time designate by notice, in lawful money of the United States. In the event that any installment of Basic Rent or any payment of Additional Rent is not paid when due, Tenant shall pay, in addition to any charges under **Section 14.4**, an administrative fee equal to 3% of the overdue payment. In addition to the foregoing, if payment of Rent or other charges due under this Lease are not paid within ten (10) Business Days after the date due, such past due amount shall bear interest from the date due until paid at a rate equal to the lesser of (i) a rate equal to 3% plus the prime rate published from time to time in The Wall Street Journal or its successor publication and (ii) the highest rate permitted to be charged by applicable Law (the "**Default Interest Rate**"). Landlord and Tenant agree that all amounts due from Tenant under or in respect of this Lease, whether labeled Basic Rent, Additional Rent or otherwise, shall be considered as rental reserved under this Lease for all purposes, including without limitation regulations promulgated pursuant to the Bankruptcy Code, and including further without limitation Section 502(b) thereof. Landlord agrees to waive the administrative fee due hereunder for the first late payment by Tenant under this Lease per calendar year, provided that Landlord receives such payment from Tenant within five (5) Business Days after written notice of such delinquency is given to Tenant (provided that if such payment is not received within the aforesaid five (5) Business Day period, interest on the outstanding amount will accrue as of the original date such payment is due).

(b) Basic Rent for any partial month shall be pro-rated on a daily basis, and if the first day on which Tenant must pay Basic Rent shall be other than the first day of a calendar month, the first payment which Tenant shall make to Landlord shall be equal to a proportionate part of the monthly installment of Basic Rent for the partial month from the first day on which Tenant must pay Basic Rent to the last day of the month in which such day occurs, plus the installment of Basic Rent for the succeeding calendar month.

ARTICLE 4 CONDITION OF PREMISES

4.1 Condition of Premises; Initial Improvements. The Premises are being leased in their present condition, AS IS, WITHOUT REPRESENTATION OR WARRANTY by Landlord. Except for the Tenant Improvement, Landlord shall have no obligation to perform any alterations or to make any improvements to the Premises to prepare them for Tenant's occupancy. Tenant acknowledges that Tenant has inspected the Premises, Laboratory Systems and Common Facilities and has found the same satisfactory, subject to Landlord's obligation to complete Landlord's Work in accordance with all of the terms and conditions of this Lease. Notwithstanding the foregoing, on the Commencement Date, Landlord shall deliver possession of the Premises to Tenant vacant, broom clean, free and clear of all tenants and their personal property and with the Laboratory Systems and the Building Systems in good working order, provided, however, Tenant, as part of the Tenant Work, shall be responsible to connect and/or tie in to the Laboratory Systems and the Building Systems. Landlord agrees to provide Tenant with a copy of the decommissioning report Landlord receives from the existing tenant of the Premises by not later than the Commencement Date, provided, however, such delivery will be for informational purposes only and Tenant shall have no right to rely upon any information or statements in such decommissioning report and Landlord shall have no liability with respect to such report.

ARTICLE 5 USE OF PREMISES

5.1 Permitted Use.

(a) Tenant agrees that the Premises shall be used and occupied by Tenant only for the Permitted Use and for no other use without Landlord's express written consent. Notwithstanding anything to the contrary contained in this Lease, no more than fifty percent (50%) of the floor area for each floor that is located in the Laboratory Portion may be used or designed for research and development, including a biotechnical and/or laboratory use. This Lease shall at all times be subject and subordinate to the Declaration and the Record Documents (as hereinafter defined) and Tenant agrees that it shall not engage in any action that would result in a violation of the Declaration or any of the Record Documents, as the same may be amended from time to time. For purposes of this Lease, "**Record Documents**" shall mean all agreements declarations, covenants, restrictions, reservations, liens, conditions, easements, encumbrances and other matters of record and affecting the Property on the date hereof and all agreements declarations, covenants, restrictions, reservations, liens, conditions, easements, encumbrances and other matters hereinafter granted or executed by Landlord, any of Landlord's affiliates (or their respective successors or assigns (collectively, the "**Landlord Parties**"), including, without limitation, any amendments to existing Record Documents entered into or obtained by any of the Landlord Parties in connection with the development of the Boston Landing Project, including, without limitation, the Fundamental Approvals (as defined in the Declaration). Landlord represents and warrants to Tenant that, as of the date of this Lease, there is no so called "ground lease," "master lease" or similar instrument

encumbering the Premises.

(b) Tenant shall not (a) use or occupy the Building, (b) permit the use or occupancy of the Premises, (c) do anything or bring into or keep in or about the Building, or (d) permit any act or practice to be done or anything to be brought into or kept in or about the Premises or any part thereof that: (i) would violate any of the covenants, agreements, terms, provisions and conditions of this Lease or any applicable Laws; (ii) would constitute a nuisance; or (iii) is inconsistent with the maintenance, operation, or occupancy of the Building as a first-class mixed-use laboratory and office building, or is liable to invalidate any insurance maintained by Landlord on the Building or its contents or the Laboratory Systems or Common Facilities. Subject to force majeure and periods when such systems are temporarily down for repairs, Tenant shall maintain temperature and humidity in the Premises in accordance with ASHRAE standards at all times. Tenant shall not use any method of HVAC other than that approved in writing by Landlord or present at the Property and serving the Premises as of the Effective Date of this Lease.

(c) Tenant acknowledges and agrees that the Building is or may become in the future certified under the Green Building Initiative's Green Globes TM for Continual Improvement of Existing Buildings (Green Globes TM-CIEB), the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system, or similar standard pursuant to Landlord's sustainable building practices. Landlord's sustainability practices may address whole-building operations and maintenance issues including chemical use; indoor air quality; energy efficiency; water efficiency; recycling programs; exterior maintenance programs; and systems upgrades to meet green building energy, water and lighting performance standards. Tenant shall exercise reasonable efforts not to change its manner of use of the Premises or the operation of its business therein in any manner that will cause the Building or any part thereof not to conform with Landlord's sustainability practices or the certification of the Building issued pursuant to the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system or other applicable ratings or standards now or hereafter achieved for the Building, such as, without limitation, the U.S. EPA's Energy Star® rating. Tenant agrees to exercise reasonable efforts to use proven energy and carbon reduction measures, including energy efficient bulbs in task lighting; use of lighting controls; daylighting measures to avoid overlighting interior spaces; closing shades on the certain sides of the building to avoid over heating the space; and purchasing ENERGY STAR® qualified equipment, including but not limited to lighting, office equipment, commercial and residential quality kitchen equipment, vending and ice machines; purchasing products certified by the U.S. EPA's Water Sense® program, provided, however, other than the cost of any future re-certification of such LEED certification which Landlord shall be entitled to include in Operating Expenses, Tenant shall not be obligated to incur additional expenses, more than di minimis in nature, in order to comply with the provisions of this **Section 5.1(c)**.

(d) Landlord reserves the right, at any time during the Term, to submit the Building and/or the Property to the provisions of Chapter 183A of the Massachusetts General Laws to create a condominium (a "**Condominium Conversion**"). In the event of a Condominium Conversion, this Lease shall remain in full force and effect and be subject and subordinate to the master deed and by-laws and other documents creating the

condominium (the "**Condominium Documents**"). Following the creation of the Condominium, Landlord and Tenant shall execute a revised Notice of Lease and any other documents to replace the original legal description in such documents with the legal description of the condominium unit in which the Premises is located. Tenant agrees to subordinate this Lease to the Condominium Documents and enter into any instruments reasonably requested by Landlord in connection with the foregoing so long as the same do not diminish or detract from the rights of Tenant or expand or enhance the obligations of Tenant or decrease any obligations of Landlord under this Lease in any material way. As a condition to such subordination, Landlord shall deliver to Tenant a Non-Disturbance Agreement in form reasonably acceptable to Landlord and Tenant from the association or board governing the condominium that Tenant's possession of the Premises shall not be disturbed in the event of any termination of the Condominium or any exercise by the association or board of its rights under the Condominium Documents to enforce assessments of unpaid common charges against the unit. If either party reasonably believes that it is necessary to clarify the terms of this Lease as a result of such Condominium Conversion, Landlord and Tenant shall promptly execute an agreement clarifying their respective obligations under this Lease; provided, however, that neither party shall be required to execute any such instrument which would diminish or detract from the rights of such party or expand or enhance the obligations of such party, in either case under this Lease.

(e) Tenant shall establish and maintain a chemical safety program administered by a licensed, qualified individual if required by and in accordance with the requirements of the Massachusetts Water Resources Authority ("**MWRA**") and any other applicable governmental authority. Tenant shall be solely responsible for all costs incurred in connection with such chemical safety program, and Tenant shall provide Landlord with such documentation as Landlord may reasonably require evidencing Tenant's compliance with the requirements of (a) the MWRA and any other applicable governmental authority with respect to such chemical safety program and (b) this Section.

(f) Tenant shall be responsible for the proper use, storage, removal and disposal of all Medical Waste (as hereinafter defined) in accordance with Laws and any additional requirements which Landlord may reasonably establish from time to time by written notice to Tenant. Tenant shall, at its sole cost and expense, engage a reputable, duly licensed and insured contractor for such disposal of Medical Waste, provided, however, Tenant may utilize Tenant's own employees for such disposal so long as such employees are properly licensed in Massachusetts to dispose of Medical Waste. Tenant shall not place any Medical Waste in any Common Facilities. "**Medical Waste**" shall mean collectively, (i) any human or animal tissue, blood, urine or other bodily fluids, materials or biological byproducts, (ii) any medical supplies (including used syringes, gauze and bandages), and (iii) any and all substances and materials defined or referred to as "a-medical waste," "biological waste," "biohazardous waste," "biohazardous material" or any other term of similar import under any Environmental Laws.

(g) Tenant shall not cause or permit (or conduct any activities that would cause) any release of any odors or fumes of any kind from the Premises that are

not common or typical for general office use for the Office Portion of the Premises or

common or typical for research and development uses for the Laboratory Portion of the Premises. Tenant shall in compliance with applicable Laws vent all fumes and odors from the Premises (and remove odors from Tenant's exhaust stream) as Landlord reasonably requires. The placement and configuration of all ventilation exhaust pipes, louvers and other equipment shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall, at Tenant's sole cost and expense, provide odor eliminators and other devices (such as filters, air cleaners, scrubbers and whatever other equipment may in Landlord's reasonable judgment be necessary or appropriate from time to time) to remove, eliminate and abate any unreasonable odors, fumes or other substances in Tenant's exhaust stream that, in Landlord's reasonable judgment, emanate from Tenant's Premises and are not common or typical for general office use or for research and development uses, as applicable. Any work Tenant performs under this Section shall constitute Alterations. Tenant's responsibility to control odors, fumes and exhaust as provided in this **Section 5.1(g)** shall continue throughout the Term.

(h) Tenant acknowledges that it has been advised that the Landlord Parties and/or other Parcel Owners (as defined in the Declaration) intend to construct additional improvements on and continue and complete the full development of the Boston Landing Project pursuant to the Declaration, the Fundamental Approvals and the Other Site Approvals (as such terms are defined in the Declaration) in one or more phases. As a material inducement to Landlord to enter into this Lease, Tenant acknowledges and expressly agrees that the Landlord Parties and/or other third parties shall have the right (but without any obligation so to do) at any time during the Term to complete and construct the additional phases of the Boston Landing Project (the "**Project Improvements**") pursuant to the Declaration, the Fundamental Approvals and the Other Site Approvals and the construction of Project Improvements during the Term and while Tenant is in occupancy of the Premises shall not be considered an eviction, actual or constructive, of Tenant from the Premises and shall not entitle Tenant to terminate this Lease or to an abatement of any Basic Rent, Escalation Charges or Additional Rent payable hereunder. Landlord shall provide Tenant with reasonable prior written notice of any Project Improvements. Tenant acknowledges and agrees that such ongoing construction may result in noise, dust, vibrations and other disturbances and Tenant has entered into this Lease and agreed to perform the obligations of Tenant hereunder with knowledge of the on-going performance of the Project Improvements. Landlord shall, to the extent any construction activities at the Boston Landing and the performance of the Project Improvements are being performed by or on behalf of any of the Landlord Parties, implement reasonable construction measures and procedures to mitigate dust, noise, vibrations and other disturbances to Tenant to the extent commercially feasible provided that such efforts and measures shall not require any of the Landlord Parties to perform the Project Improvements outside of normal building hours or at material additional cost to any of the Landlord Parties.

5.2 Tenant Work.

(a) Within the twenty-four (24) month period immediately following the Commencement Date, Tenant shall perform, at Tenant's sole cost and expense, the Tenant Work (as defined in Exhibit D attached hereto) in accordance with the terms

and

conditions of **Exhibit D** attached hereto and the terms of this Lease applicable to Alterations.

(b) Tenant shall reimburse Landlord within thirty (30) days of receipt of Landlord's written invoice, as Additional Rent, for actual out-of-pocket, third-party engineer and architect costs incurred by Landlord in connection with review and approval of the Construction Drawings and Change Orders (as hereinafter defined), provided that the charges of such consultants are commercially reasonable for the services provided to Landlord, plus a construction management fee to Landlord equal to 1% of the hard construction costs to perform the Tenant Work.

5.3 Installations and Alterations by Tenant.

(a) Tenant shall make no alterations, additions or improvements (collectively, "**Alterations**") in or to the Premises (including any of the Tenant Work, necessary for Tenant's initial occupancy of the Premises) or any Base Building Systems or Laboratory Systems serving the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed with respect to non-structural Alterations that do not adversely affect any portion of the Base Building or Laboratory Systems or the Base Building Systems. Notwithstanding the foregoing, Tenant may make Cosmetic Alterations (as hereinafter defined) to the Premises without Landlord's consent so long as Landlord is notified in writing at least ten (10) days prior to commencement of any such Cosmetic Alterations. Landlord may, at the time consent is given, identify in writing any Alterations (including any of the Tenant Work, necessary for Tenant's initial occupancy of the Premises) that adversely affect or alter the Structural Elements as Special Improvements (as hereinafter defined) which, provided Landlord so identifies such alterations, shall be removed by Tenant and the Premises restored at the end of the Term pursuant to **Section 5.3(e**) below. Any Alterations shall be in accordance with Landlord's Rules and Regulations from time to time in effect and with plans and specifications meeting the requirements set forth in such Rules and Regulations and approved in advance by Landlord. All Alterations shall (i) be performed in a good and workmanlike manner using only new and only quality materials and in compliance with all applicable Laws; (ii) be made at Tenant's sole cost and expense (other than, as applicable, the Landlord's Contribution); (iii) become part of the Premises and the property of Landlord upon the expiration or earlier termination of the Term of this Lease unless Landlord otherwise notifies Tenant (at the time consent is given) such Alteration must be removed at the end of the Term or earlier expiration of this Lease as provided in **Section 5.3(e)** below; (iv) be made by contractors and subcontractors reasonably approved in advance by Landlord; and (v) be coordinated with any work being performed by Landlord in such a manner as not to damage the Building or interfere with the management, maintenance or operation of the Building. At Landlord's request, Tenant shall, before its work is started, secure assurances satisfactory to Landlord in its reasonable discretion protecting Landlord against claims arising out of the furnishing of labor and materials for the Alterations. If any Alterations shall involve the removal of fixtures, equipment or other property in the Premises which are not Tenant's Removable Property, such fixtures, equipment or property shall be promptly replaced by Tenant at its expense with new fixtures, equipment or property of like utility and of at least equal

quality. Tenant shall promptly reimburse Landlord for all reasonable out of pocket costs, including attorneys', architects', engineers', and consultants' fees, incurred by Landlord in connection with any request from Tenant pursuant to this **Section 5.3**. Tenant acknowledges and agrees that any review or approval by Landlord of any plans and/or specifications with respect to any Alterations is solely for Landlord's benefit, and without any representation or warranty whatsoever to Tenant with respect to the adequacy, correctness or efficiency thereof or otherwise. Landlord shall have the right to require that Tenant use Landlord's designated structural contractor and architect for the Building for the design and performance of any Alterations affecting the Structural Elements and/or that Tenant use Landlord's designated fire and life safety contractor and engineer for the Building to perform Tenant's connection to the Building's fire alarm system or any Alterations that affect the fire alarm or fire/life safety systems in the Building. For purposes hereof, "**Cosmetic Alterations**" shall mean painting and other minor cosmetic or decorative alterations to the Premises and other non-structural alterations which other non- structural alterations (1) do not affect any area of the Building outside of the Premises, (2) are not visible from the exterior of the Premises or the Building, (3) do not adversely affect the Building's electrical, plumbing, mechanical or fire/life safety systems or any other systems of the Building, and (4) cost less than $100,000 in any Lease Year and do not require the issuance of a building permit.

(b) Except for Tenant's Removable Property (as hereinafter defined), all property of any kind paid for by Landlord, all Alterations, all fixtures and partitions, hardware, built-in machinery, built-in casework and cabinets or other similar additions, equipment, property or improvements built into the Premises so as to become an integral part of the Premises, including, without limitation, fume hoods which penetrate the roof or plenum area, built-in or walk-in cold rooms, built-in or walk-in warm rooms, deionized water systems, glass washing equipment, autoclaves, chillers, built-in plumbing, electrical and mechanical equipment and systems, and any power generator and transfer switch (collectively, "**Laboratory Reusable Installations**"), shall be and shall remain the property of Landlord during the Term and following the expiration or earlier termination of the Term, and shall not be removed by Tenant at any time and shall remain in and be surrendered with the Premises as part thereof. "**Tenant's Removable Property**" shall mean any items listed on **Exhibit I** attached hereto and any items agreed by Landlord in writing to be included on **Exhibit I** in the future, as well as Tenant's personal property and all movable business and trade equipment owned or installed by Tenant or any party claiming by, through or under Tenant, not constituting Laboratory Reusable Installations. Tenant's Removable Property shall remain the property of Tenant and may be removed by Tenant at any time prior to the expiration or earlier termination of the Term, provided that Tenant, at its expense, shall repair any damage to the Building caused by such removal. Any provision of this Lease to the contrary notwithstanding, Tenant shall be solely responsible for the ordering, delivery and installation of any telephone, telephone switching, telephone and data cabling, and Tenant's Removable Property to be installed by or on behalf of Tenant in the Premises and for the removal of all telephone and data cabling installed in the Building by or on behalf of Tenant or anyone claiming by, through or under Tenant at the expiration or earlier termination of the Term of this Lease.

(c) Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of Landlord in and to the Premises, the Building or the Property. To the maximum extent permitted by law, before such time as any contractor commences to perform work on behalf of Tenant, such contractor (and any subcontractors) shall furnish a written statement acknowledging the provisions set forth in the prior clause. Tenant agrees to pay promptly when due the entire cost of any work done on behalf of Tenant, its agents, employees or independent contractors, and not to cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to all or any part of the Property and within twenty (20) days after receipt of written notice of any such liens to discharge or bond over (satisfactory to Landlord) any such liens which may so attach. If, notwithstanding the foregoing, any lien is filed against all or any part of the Property for work claimed to have been done for, or materials claimed to have been furnished to, Tenant or its agents, employees or independent contractors, Tenant, at its sole cost and expense, shall, within twenty (20) days after receipt of written notice thereof, cause such lien to be dissolved promptly after receipt of notice that such lien has been filed, by the payment thereof or by the filing of a bond sufficient to accomplish the foregoing. If Tenant shall fail to discharge any such lien, Landlord may, at its option, discharge such lien and treat the cost thereof (including attorneys' fees incurred in connection therewith) as Additional Rent payable upon demand, it being expressly agreed that such discharge by Landlord shall not be deemed to waive or release the Event of Default in not discharging or so bonding over such lien within such twenty (20) day period. Tenant shall indemnify and hold Landlord harmless from and against any and all expenses, liens, claims, liabilities and damages based on or arising, directly or indirectly, by reason of the making of any alterations, additions or improvements by or on behalf of Tenant to the Premises under this Section, which obligation shall survive the expiration or termination of this Lease.

(d) In the course of any work being performed by Tenant (including, without limitation, the installation or removal of any Tenant's Removable Property), Tenant agrees to use labor compatible with that being employed by Landlord for work in the Building or on the Property or other buildings owned by Landlord or its affiliates (which term, for purposes hereof, shall include, without limitation, entities which control or are under common control with or are controlled by Landlord or, if Landlord is a partnership or limited liability company, by any partner or member of Landlord) and not to employ or permit the use of any labor or otherwise take any action which might result in a labor dispute or disharmony involving personnel providing services in the Building or on the Property pursuant to arrangements made by Landlord.

(e) Landlord may, by written notice to Tenant at the time of the approval of any Special Improvement (as hereinafter defined), require Tenant, at Tenant's expense, to remove any Special Improvement made to the Premises at the expiration or earlier termination of the Term, and to repair any damage to the Premises and Building caused by such removal and return the affected portion of the Premises to a Building standard tenant improved condition as determined by Landlord. If Tenant fails to complete such removal and/or to repair any damage caused by the removal of any

Improvements to the Premises designated by Landlord for removal, and return the affected portion of the Premises to a Building standard tenant improved condition as determined by Landlord, then, without limiting Landlord's other rights and remedies, at Landlord's option, either (A) Tenant shall be deemed to be holding over in the Premises and Rent shall continue to accrue in accordance with the terms of **Article 12**, below, until such work shall be completed, or (B) Landlord may do so and may charge the cost thereof to Tenant. For purposes hereof, "**Special Improvements**" shall mean any Alterations made by Tenant or any party claiming by, through or under Tenant that (i) would reasonably be expected to adversely affect any structural or exterior element of the Building, any area or element outside of the Premises or any facility or base building mechanical system serving any area of the Building, or (ii) involve or affect the exterior design, size, height or other exterior dimensions of the Building, or (iii) are inconsistent with the Building standards for Comparable Buildings, or (iv) will require material additional expense to demolish or remove from and restore the Premises to normal office/laboratory use on termination of this Lease or increase the Operating Expenses for the Building, and shall expressly include, without limitation, such Alterations as interconnecting/internal staircases, data centers in excess of 2,000 square feet of rentable floor area (either singly or collectively), and non-core restrooms (and any horizontal plumbing lines associated with such restrooms).

5.4 **Extra Hazardous Use**. Tenant covenants and agrees that Tenant will not do or permit anything to be done in or upon the Premises, or bring in anything or keep anything therein, which shall increase the rate of property or liability insurance on the Premises or the Property above the standard rate applicable to Premises being occupied for the Permitted Use. If the premium or rates payable with respect to any policy or policies of insurance carried by or on behalf of Landlord with respect to the Property increases as a result of any act or activity on or use of the Premises during the Term by Tenant or Tenant's employees, agents, contractors, subtenants, licensee, invitees or anyone claiming by, through or under Tenant (whether or not done knowingly by such a party, but only to the extent resulting from such act or activity as set forth in this **Section 5.4**) or payment by the insurer of any claim arising from any act or neglect of Tenant, its employees, agents, contractors, invitees, subtenants, licensees or anyone claiming by, through or under Tenant, Tenant shall be given written notice and a five (5) business day opportunity to discontinue such use and if Tenant fails to do so, Tenant shall pay such increase, from time to time, within thirty (30) days after written demand therefor by Landlord, as Additional Rent.

5.5 **Hazardous Materials**.

(a) Landlord acknowledges that it is not the intent of this **Section 5.5** to prohibit Tenant from using the Premises for the Permitted Use. Tenant may operate its business according to prudent industry practices so long as the use or presence of Hazardous Materials is strictly and properly monitored by Tenant according to all then applicable Environmental Laws. As a material inducement to Landlord to allow Tenant to use Hazardous Materials in connection with its business, Tenant agrees to deliver to Landlord prior to the Commencement Date a list identifying each type of Hazardous Materials to be brought upon, kept, used, stored, handled, treated, generated on, or released or disposed of from, the Premises and setting forth any and all governmental

approvals or permits required in connection with the presence, use, storage, handling, treatment, generation, release or disposal of such Hazardous Materials on or from the Premises ("**Hazardous Materials List**"). Upon request of Landlord, Tenant shall deliver to Landlord an updated Hazardous Materials List within thirty (30) days following Landlord's request. Tenant shall deliver to Landlord true and correct copies of the permits, approvals, reports and correspondence, and storage and management plans relating to the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials by Tenant at the Premises. At any time following Tenant's receipt of a request from Landlord, Tenant shall promptly complete a "hazardous materials questionnaire" using the form then-provided by Landlord. At least three (3) months prior to the surrender of the Premises, Tenant shall deliver to Landlord a narrative description of the actions proposed (or required by any governmental authority) to be taken by Tenant in order to surrender the Premises (including any Alterations permitted by Landlord to remain in the Premises, the Improvements and Laboratory Reusable Installations) at the expiration or earlier termination of the Term, free from any residual impact from the Tenant's use of Hazardous Materials and otherwise released for unrestricted use and occupancy consistent with Tenant's obligations under **Section 5.5(e)** below (the "**Surrender Plan**"). Tenant's Surrender Plan shall state that, (a) (i) all laboratory space, including floors, walls, ceilings, counters, piping, supply lines, waste lines and plumbing in or serving the Premises and all exhaust or other ductwork in or serving the Premises, and (ii) any applicable systems shared by laboratory space, including without limitation exhaust or other ductwork, in or serving the Premises have been de-commissioned to the extent required by, and in accordance with, applicable Laws and in accordance with best industry practice; (b) the interior surfaces of the Premises (including floors, walls, ceilings, and counters), piping, supply lines, waste lines and plumbing, and all such exhaust or other ductwork in the Premises, may be reused by a subsequent tenant or disposed of in compliance with applicable Laws without: (i) incurring special costs on account of uncompleted de-commissioning work; (ii) undertaking special procedures for demolition, disposal, investigation, assessment, cleaning or removal of such Hazardous Materials related to the former laboratory use areas of the Premises; or (iii) giving notice in connection with such Hazardous Materials; and (c) the Premises may be reoccupied for office or laboratory use, or demolished or renovated without: (i) incurring special costs on account of uncompleted de-commissioning work; (ii) undertaking special procedures for disposal, investigation, assessment, cleaning or removal of Hazardous Materials; or (iii) giving notice in connection with Hazardous Materials. Further, for purposes of clauses (b) and (c), "special costs" or "special procedures" shall mean costs or procedures, as the case may be, that would not be incurred but for the nature of the Hazardous Materials as Hazardous Materials instead of non-Hazardous Materials. The final report shall also include reasonable detail concerning the clean-up measures taken, the clean-up locations, the tests run and the analytic results applicable to the above.

(b) Any handling, treatment, transportation, storage, disposal or use of Hazardous Materials by Tenant in or about the Premises or the Property and Tenant's use of the Premises shall comply with all applicable Environmental Laws. Without Landlord's prior written consent, Tenant shall not conduct any sampling or investigation of soil or groundwater on the Property to determine the presence of any constituents therein.

(c) Tenant shall indemnify, defend upon demand with counsel reasonably acceptable to Landlord, and hold Landlord and the Landlord Parties (as hereinafter defined) harmless from and against, any liabilities, losses claims, damages, interest, penalties, fines, reasonable attorneys' and experts' fees, court costs, remediation costs, and other expenses which result from the use, storage, handling, treatment, transportation, release, threat of release or disposal of Hazardous Materials in or about the Premises or the Property by Tenant or Tenant's agents, employees, contractors or invitees. The provisions of this **paragraph (c)** shall survive the expiration or earlier termination of this Lease.

(d) Tenant shall give written notice to Landlord as soon as reasonably practicable of (i) any communication received by Tenant from any governmental authority concerning Hazardous Materials which relates to the Premises or the Property, and (ii) any disposal, release or threat of release of Hazardous Materials on, under, from or about the Building or the Property of which Tenant is aware.

(e) Upon the expiration of the Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, subject to any Alterations or Laboratory Reusable Installations permitted or required by Landlord to remain in the Premises, free of Hazardous Materials (subject to the requirements of **Section 5.5(a)**) brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of from, the Premises by any person other than Landlord or any of the Landlord Parties (collectively, "**Tenant Laboratory Operations**") and released of all licenses, clearances or other authorization of any kind required to enter into and restore the Premises issued by any governmental authority having jurisdiction over the use, storage, handling, treatment, generation, release, disposal, removal or remediation of Hazardous Materials, broom clean, ordinary wear and tear and casualty loss and condemnation excepted. Tenant's Surrender Plan shall be accompanied by a current listing of (i) all Hazardous Materials licenses and permits held by or on behalf of Tenant or any party claiming by, through or under Tenant with respect to the Premises, and (ii) all Hazardous Materials used, stored, handled, treated, generated, released or disposed of from the Premises, and shall be subject to the review and approval of Landlord's environmental consultant. In connection with the review and approval of the Surrender Plan, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such additional non-proprietary information concerning Tenant Laboratory Operations as Landlord shall reasonably request. On or before such surrender, Tenant shall deliver to Landlord evidence that the approved Surrender Plan shall have been satisfactorily completed and Landlord shall have the right, subject to reimbursement at Tenant's expense as set forth below, to cause Landlord's environmental consultant to inspect the Premises and perform such additional procedures as may be deemed reasonably necessary to confirm that the Premises are, as of the effective date of such surrender or early termination of the Lease, free from any residual adverse impact from Tenant Laboratory Operations. Tenant shall reimburse Landlord, within ten (10) days of demand as Additional Rent, for the reasonable expense incurred by Landlord for Landlord's environmental consultant to review and approve the Surrender Plan and to visit the Premises and verify satisfactory completion of the same. Landlord shall have the

unrestricted right to deliver such Surrender Plan and any report by Landlord's environmental consultant with respect to the surrender of the Premises to third parties.

(f) Tenant hereby represents and warrants to Landlord that (i) neither Tenant nor any of its legal predecessors has been required by any prior landlord, lender or governmental authority at any time to take remedial action in connection with Hazardous Materials contaminating a property which contamination was permitted by Tenant or such predecessor or resulted from Tenant's or such predecessor's action or use of the property in question in violation of Environmental Law, and (ii) Tenant is not subject to any enforcement order issued by any governmental authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any governmental authority).

(g) If Landlord has a reasonable basis to believe that Tenant or any of the Tenant Parties is in violation of any of the terms or conditions of this **Section 5.5**, Landlord shall have the right to conduct annual tests of the Premises to determine whether any contamination of the Premises, the Building or the Property has occurred as a result of Tenant's use. In addition, at any time, and from time to time (no more than once per every twelve (12) month period unless Landlord has a reasonable basis to do so more frequently), prior to the expiration or earlier termination of the Term, Landlord shall have the right to conduct appropriate tests of the Premises and the Building to determine if contamination has occurred as a result of Tenant's use of the Premises. In connection with such testing, upon the written request of Landlord, Tenant shall deliver to Landlord or its consultant such non-proprietary information concerning the use of Hazardous Materials in or about the Premises by Tenant or any party claiming by, through or under Tenant. If contamination has occurred for which Tenant is liable under this **Section 5.5**, Tenant shall pay all costs to conduct such tests. If no such contamination is found, Landlord shall pay the costs of such tests. Tenant shall, at its sole cost and expense, promptly and satisfactorily remediate in accordance with all Environmental Laws any contamination identified by such testing to be in violation of Environmental Laws. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights which Landlord may have against Tenant.

(h) In no event may Tenant install any underground or other storage tanks in or under the Building or at the Property without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

(i) Tenant's obligations under this **Section 5.5** shall survive the expiration or earlier termination of the Lease. Without limitation of Landlord's other remedies under this Lease, during any period of time after the expiration or earlier termination of this Lease required by Tenant or Landlord to complete the removal from the Premises of any Hazardous Materials (including, without limitation, the release and termination of any licenses or permits restricting the use of the Premises and the completion of the approved Surrender Plan) or to satisfy Tenant's obligations under **Section 5.5(e)** above, Tenant shall continue to pay the full Rent in accordance with this

Lease for any portion of the Premises not relet by Landlord in Landlord's sole discretion, which Rent shall be prorated daily.

ARTICLE 6 ASSIGNMENT AND SUBLETTING

6.1 Prohibition.

(a) Tenant covenants and agrees that neither this Lease nor the term and estate hereby granted, nor any interest herein or therein, will be assigned, mortgaged, pledged, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, and that neither the Premises nor any part thereof will be encumbered in any manner by reason of any act or omission on the part of Tenant, or used or occupied or permitted to be used or occupied, by anyone other than Tenant, or for any use or purpose other than a Permitted Use, or be sublet (which term, without limitation, shall include granting of concessions, licenses and the like) in whole or in part, or be offered or advertised for assignment or subletting by Tenant or any person acting on behalf of Tenant, without, in each case, the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, subject to the terms and conditions of **Section 6.2** below (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). Without limiting the foregoing, any agreement pursuant to which: (x) Tenant is relieved from the obligation to pay, or a third party agrees to pay on Tenant's behalf, all or any portion of the Basic Rent or Additional Rent under this Lease; and/or (y) a third party undertakes or is granted by or on behalf of Tenant the right to assign or attempt to assign this Lease or sublet or attempt to sublet all or any portion of the Premises, shall for all purposes hereof be deemed to be a Transfer of this Lease and subject to the provisions of this **Article 6**. A Transfer under this **Article 6** shall also include a sale or other transfer (by one or more transfers) of any of the following: the voting stock, partnership interests, membership or other equity interests in Tenant (or any other mechanism such as the issuance of additional stock or the creation of additional partnership or membership interests) which results in a change of control of Tenant or a sale or other transfer (in one or more transfers) of fifty percent (50%) or more of the assets of Tenant, as if such transfer were an assignment of this Lease. Notwithstanding the foregoing, if equity interests in Tenant at any time are or become traded on a national securities exchange (as defined in the Securities Exchange Act of 1934), the transfer of equity interests in Tenant on a national securities exchange shall not be deemed an assignment within the meaning of this Article; provided, however, that if Tenant is a corporation the outstanding stock of which is listed on a national securities exchange, then any private purchase or buyout of stock shall be deemed a Transfer under this **Article 6**.

(b) Notwithstanding the foregoing, Landlord's consent shall not be required under **Section 6.1(a),** and **Section 6.3, Section 6.4,** and **Section 6.5** shall not apply to any assignment of this Lease or sublease of all or any portion of the Premises to
(x) an entity into or with which Tenant is merged or consolidated, or to which all or

substantially all of Tenant's assets or stock are transferred, or (y) transactions with any

entity which controls or is controlled by Tenant or is under common control with Tenant; provided and only on condition that in any such event:

(i) the successor to Tenant has a net worth, computed in accordance with generally accepted accounting principles ("**GAAP**") consistently applied, at least equal to the Tangible Net Worth of Tenant on the date of this Lease,

(ii) proof satisfactory to Landlord of the Tangible Net Worth of both the transferee and Tenant shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction, or, if Tenant is prohibited by Law or any restrictions in the agreement facilitating such transaction from disclosing such information prior to the effective date of any such transaction, within ten (10) days following the effective date of any such transaction,

(iii) the transfer is for a valid business purpose of Tenant and is not a subterfuge for the provisions of this **Article 6**, and

(iv) the transferee agrees directly with Landlord, by written instrument in form satisfactory to Landlord in its reasonable discretion, to be bound by all the obligations of Tenant hereunder, including, without limitation, the covenant against further assignment and subletting.

Any assignment or sublease under this Section 6.1(b) is referred to herein as a "**Permitted Transfer**". If any Affiliate of Tenant to which this Lease is assigned or the Premises sublet (in whole or in part) shall cease to be an Affiliate of Tenant, such cessation shall be considered a Transfer requiring Landlord's consent in accordance with the standards set forth in **Section 6.**1. Notwithstanding any Permitted Transfer, Tenant shall continue to remain fully liable under this Lease, on a joint and several basis with the Permitted Transferee except in cases of statutory merger or consolidation or sale of substantially all of the assets or stock of Tenant (and in connection with which sale Tenant is dissolved and provided the purchaser becomes the named Tenant under this Lease by operation of law or by written assignment and assumption agreement in form reasonably acceptable to Landlord) in which case the surviving entity in the merger or consolidation or the purchaser of such assets or stock to which this Lease has been assigned shall be liable as the Tenant under this Lease.

6.2 **Landlord's Consent**.

(a) If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred, (iii) all of the terms of the proposed Transfer and the consideration therefor, including the name and address of the proposed Transferee, and an executed copy of all documentation effectuating the

proposed Transfer, including all operative documents to evidence such Transfer and all agreements incidental or related to such Transfer, (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, business credit and personal references and history of the proposed Transferee and any other information reasonably required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Premises.

(b) In the event Landlord does not exercise its options pursuant to **Section 6.5** below to recapture the Premises or terminate this Lease in whole or in part, Landlord's consent to a proposed Transfer shall not be unreasonably withheld, conditioned or delayed, provided and upon condition that:

(i) There shall not be an Event of Default that remains uncured;

(ii) In Landlord's reasonable judgment the proposed Transferee is engaged in a business which is in keeping with the then standards of the Building and Property and the proposed use is limited to the Permitted Use, including being classified by the UBC (as hereinafter defined) as a "B" occupancy area for the use and storage of Hazardous Materials;

(iii) The proposed Transferee is a reputable entity and has sufficient financial worth and stability in light of the responsibilities to be undertaken, based on evidence provided by Tenant (and others) to Landlord, as determined by Landlord in its reasonable discretion;

(iv) The proposed Transferee is not then a tenant of Landlord at any part of the Property, provided that Landlord has competing space of comparable size available for a comparable term;

(v) The proposed Transferee is not a person or entity with whom Landlord is then, or during the preceding four (4) months has been, actively negotiating to lease space at the Property;

(vi) The proposed Transferee or any person or entity which, directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee is not a direct or indirect competitor, in the footwear or apparel industry, of Landlord or any of Landlord's affiliates, including, without limitation, New Balance Athletic Shoe, Inc. or any successor thereto, (a "**Landlord Competitor**")

(vii) The proposed Transfer shall be in form reasonably satisfactory to Landlord and shall comply with the applicable provisions of this **Article 6**;

(viii) Tenant shall not have advertised or publicized in any way the

availability of the Premises at rental rate less than the base rent and additional

rent at which Landlord is then offering to lease other space located in the Building without prior notice to and approval by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed;

(ix) With respect to a proposed sublease, the proposed sublease involves, in Landlord's reasonable judgment, a portion of the Premises which is independently leasable space;

(x) With respect to and after taking into account a proposed sublease, there will not be more than three (3) different entities (including Tenant) occupying the Premises;

(xi) Intentionally omitted;

(xii) The proposed Transfer shall not have (or potentially have) any adverse effect on any real estate investment trust qualification requirements of Landlord or any of its affiliates or otherwise cause Landlord or any of its affiliates to be in violation of any Laws to which Landlord or such affiliate is subject, including, without limitation, the Employment Retirement Security Act of 1974;

(xiii) If required in the mortgage documents or ground lease, the holder of any Superior Mortgage and/or Superior Lease, as applicable, consents to such Transfer; and

(xiv) Neither the identity nor business of the proposed Transferee would cause Landlord to be in violation of any covenant or restriction contained in another lease then in effect at the Property.

(c) As a condition to an assignment or subletting, whether Landlord's consent is required or not, Landlord may require a Hazardous Materials List, certified by the proposed assignee or sublessee to be true and correct, which the proposed assignee or sublessee intends to use, store, handle, treat, generate in or release or dispose of from the Premises, together with copies of all documents relating to such use, storage, handling, treatment, generation, release or disposal of Hazardous Materials by the proposed assignee or subtenant in the Premises, prior to the proposed assignment or subletting, including, without limitation: permits; approvals; reports and correspondence; and storage and management plans.

6.3 **Acceptance of Rent**. If this Lease is assigned, or if the Premises or any part thereof is sublet or occupied by anyone other than Tenant, whether or not in violation of the terms and conditions of the Lease, Landlord may, at any time and from time to time, collect rent and other charges from the Transferee, and apply the net amount collected to the rent and other charges herein reserved, but no such Transfer, collection or modification of any provisions of this Lease shall be deemed a waiver of this covenant, or the acceptance of the Transferee as a tenant or a release of Tenant from the further performance of covenants on the part of Tenant to be performed hereunder. Any consent by Landlord to a particular Transfer or other act for which Landlord's consent is required under **paragraph (a)** of **Section 6.1** shall not in any way

diminish

the prohibition stated in **paragraph (a)** of **Section 6.1** as to any further such Transfer or other act or the continuing liability of the Original Tenant. No Transfer hereunder shall relieve Tenant from its obligations hereunder, and Tenant shall remain fully and primarily liable therefor.
Landlord may revoke any consent by Landlord to a particular Transfer if the Transfer does not provide that the Transferee agrees to be independently bound, by and upon all of the covenants, agreements, terms, provisions and conditions set forth in this Lease on the part of Tenant to be kept and performed, and as may be applicable to a subtenancy.

6.4 **Excess Payments**. If Tenant assigns this Lease or sublets the Premises or any portion thereof, Tenant shall pay to Landlord as Additional Rent fifty percent (50%) of the amount, if any, by which (a) any and all compensation received by Tenant as a result of such Transfer, net only of reasonable expenses actually incurred by Tenant in connection with such Transfer, including, but not limited to brokerage commissions, legal fees, and in the instance of a sublease, demising and leasehold improvement costs (prorated over the term of the Transfer), as well as any unamortized portion of leasehold improvements paid for directly by Tenant for the Premises, exceeds (b) in the case of an assignment, the Basic Rent and Additional Rent under this Lease, and in the case of a subletting, the portion of the Basic Rent and Additional Rent allocable to the portion of the Premises subject to such subletting. Notwithstanding the foregoing, Tenant shall not be required to share any rent attributable to the leasing of equipment or the provision of laboratory services to a subtenant. Such payments shall be made on the date the corresponding payments under this Lease are due. Notwithstanding the foregoing, the provisions of this Section shall impose no obligation on Landlord to consent to an assignment of this Lease or a subletting of all or a portion of the Premises.

6.5 **Landlord's Recapture Right**. Notwithstanding anything herein to the contrary, in addition to withholding or granting consent with respect to any proposed Transfer, in the event the Transfer request relates to fifty percent (50%) or more of the Premises for the balance of the Term, Landlord shall have the right, to be exercised in writing within thirty (30) days after receipt of a Transfer Notice, to terminate this Lease (in the event of a proposed assignment for the remainder of the Term) or terminate that portion of the Premises to be subleased (in the event of a proposed sublease); provided, however, Tenant shall have the right to rescind any request for sublease consent if Landlord exercises its right to recapture in accordance with the terms and conditions of this **Section 6.5**, by providing written notice to Landlord within five (5) Business Days of Tenant's receipt of Landlord's notice of its intent to recapture such subleased portion of the Premises. In the case of a proposed assignment, this Lease shall terminate as of the date (the "**Recapture Date**") which is the later of (a) sixty (60) days after receipt of Landlord's written notice of such election, and (b) the proposed effective date of such Transfer, as if such date were the last day of the Term of this Lease. In either event, if requested by Tenant, Landlord shall provide not less than ninety (90) days from the Recapture Date to allow Tenant to vacate and surrender the Premises, including to comply with the requirements of **Section 5.5**. If Landlord exercises the rights under this **Section 6.5** in connection with a proposed sublease, this Lease shall be deemed amended to eliminate the proposed sublease premises from the Premises as of the Recapture Date, and thereafter all Basic Rent and Expense Charges shall be appropriately prorated to reflect the reduction of the Premises as of the Recapture Date. If Landlord recaptures Tenant's sublease space which is less than all of the Premises, as a condition to Landlord's recapture, Landlord shall agree, at its cost, to separately demise the recapture space from the balance of the Premises and otherwise adjust all mechanical systems and utilities to provide the

same level of service to the retained Premises as had existed prior to Landlord exercising its recapture right. In the event that Landlord exercises its termination right herein, Tenant shall be relieved and discharged from any further obligations under the Lease with respect to that portion of the Premises terminated by Landlord (but not any obligations accruing prior to such termination date) as of the termination date or such later date as Tenant fully vacates and surrenders the recapture space to Landlord in accordance with the terms and conditions of this Lease, including, without limitation, **Section 5.5** of this Lease.

6.6 **Further Requirements**. Tenant shall reimburse Landlord on demand, as Additional Rent, for any reasonable out-of-pocket costs (including reasonable attorneys' fees and expenses), not to exceed $3,000 in each instance, incurred by Landlord in connection with any actual or proposed assignment or sublease or other act described in **paragraph (a)** of **Section 6.1**, whether or not consummated, including the costs of making investigations as to the acceptability of the proposed assignee or subtenant. Any sublease to which Landlord gives its consent shall not be valid unless and until Tenant and the sublessee execute a consent agreement in form and substance satisfactory to Landlord in its reasonable discretion and a fully executed counterpart of such sublease has been delivered to Landlord. Any sublease shall provide that: (i) the term of the sublease ends no later than one day before the last day of the Term of this Lease;
(ii) such sublease is subject and subordinate to this Lease; (iii) Landlord may enforce the provisions of the sublease, including collection of rents; and (iv) in the event of termination of this Lease or reentry or repossession of the Premises by Landlord, Landlord may, at its sole discretion and option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord, but nevertheless Landlord shall not (A) be liable for any previous act or omission of Tenant under such sublease; (B) be subject to any defense or offset previously accrued in favor of the subtenant against Tenant; or (C) be bound by any previous modification of such sublease made without Landlord's written consent or by any previous prepayment of more than one month's rent.

ARTICLE 7
RESPONSIBILITY FOR REPAIRS AND CONDITION OF PREMISES; SERVICES TO BE FURNISHED BY LANDLORD

7.1 **Landlord Repairs**.

(a) Except as otherwise provided in this Lease, Landlord agrees to maintain, repair and replace so as to keep in good working order, condition and repair, and in compliance with all applicable Laws, the Structural Elements of the Building, including exterior glass, the Base Building and Base Building Systems up to the point of connection with the Premises (but specifically excluding any supplemental heating, ventilation or air conditioning equipment or systems exclusively serving the Premises installed at Tenant's request or as a result of Tenant's requirements in excess of Building standard design criteria), except that Landlord shall in no event be responsible to Tenant for the repair of interior glass in the Premises or the doors (or related glass and finish work) leading to the Premises, or subject to **Section 10.5**, any condition in the Premises or the Building caused by any act or neglect of Tenant, its invitees or contractors. Landlord shall also keep and maintain the Parking Garage and all Common Facilities in a good and

clean working

order, condition and repair, free of snow and accumulation of dirt and rubbish and with reasonable treatment of ice on driveways and pedestrian walkways, and shall keep, maintain, and repair all landscaped areas on the Property in a neat and orderly condition. Subject to the terms and conditions of this Lease, Landlord shall be responsible for the maintenance, replacement and repair of Laboratory Systems only to the portion of the valve or cap for such system on each floor that connects to and exclusively services the Premises; Tenant hereby agreeing that any such portion of such system that extends from the point of such valve or cap connection on each floor to and in the Premises shall not be considered a Laboratory System. Landlord shall not be responsible to maintain or make any improvements or repairs to the Building other than as expressly in this **Section 7.1** provided, unless expressly provided otherwise in this Lease. Landlord shall be responsible for the repair and maintenance of any base Building HVAC (as hereinafter defined), subject to such expense being properly includable as an Operating Expense; provided, however, the costs otherwise covered under HVAC warranty or insurance shall not be included as an Operating Expense.

(b) Without limitation of the provisions of Section 7.6(b) below, Landlord shall not be liable for any failure to make repairs in the Premises which Landlord has undertaken to make under the provisions of this **Section 7.1** or elsewhere in this Lease, unless Tenant has given notice to Landlord of the need to make such repairs (unless Landlord otherwise is known to have actual knowledge of the need for such repairs), and Landlord has failed to commence to make such repairs within ten (10) Business Days after receipt of such notice, provided, however, if the nature of such repair reasonably requires more than ten (10) Business Days to complete, then Landlord shall not be in default so long as Landlord shall commence such cure within such 10-Business Day period and thereafter diligently complete such repairs.

(c) Except with respect to Tenant's obligations under **Section 7.2(b)** of this Lease to comply with applicable Laws, Landlord shall, as part of Operating Expenses to the extent permitted pursuant to **Article 9** and **Exhibit F** of this Lease, maintain the Common Facilities of the Property, the Parking Garage, the Structural Elements of the Building, the Base Building Systems and the Laboratory Systems serving the Premises and the Building in general in compliance with applicable Laws. Landlord agrees to operate the Building s in a manner consistent with Comparable Buildings.

7.2 Tenant Repairs; Compliance with Laws.

(a) Tenant shall keep and maintain the Premises and the Improvements, Laboratory Reusable Installations, fixtures and appurtenances therein or thereon (including, without limitation, electrical and mechanical or laboratory systems not considered part of the Base Building Systems or Laboratory Systems or any portion of such systems that have been installed for the exclusive use and benefit of Tenant such as additional HVAC equipment, hot water heaters, electronic, data, phone, and other telecommunications cabling and related equipment, and security or telephone systems for the Premises), neat and clean and in good order, condition and repair, excepting only those repairs for which Landlord is responsible under the terms of this Lease, reasonable wear

and tear, and damage by fire or other casualty or as a consequence of the exercise of the

power of eminent domain; and Tenant shall surrender the Premises, at the end of the Term, in such condition. For the avoidance of doubt, Tenant shall be responsible for the Laboratory Systems which serve the Premises from the point of valve or cap connection on each floor to the Premises. Tenant shall be responsible for all Tenant specific equipment. Subject to **Section 10.5** regarding waiver of subrogation, Tenant shall be responsible for the cost of repairs which may be made necessary by reason of damage to the Building caused by any act or neglect of Tenant, or its employees, contractors or invitees (including any damage by fire or other casualty arising therefrom). Tenant shall be responsible for the installation of any fire suppression or fire rating system that is required for Tenant's use, other than the Base Building fire protection system to the extent installed by Landlord pursuant to the Landlord/Tenant Matrix (as hereinafter defined) attached as Schedule 1 to **Exhibit C** as shall be provided as part of the Base Building Systems.

(b) Tenant shall comply with all Laws from time to time in effect and all directions, rules and regulations of governmental agencies having jurisdiction, and the standards recommended by the local Board of Fire Underwriters applicable to the Premises and Tenant's use and occupancy thereof and its business and operations therein, and shall, at Tenant's expense, obtain all permits, licenses and the like required thereby. Notwithstanding the foregoing, Tenant shall not be obligated to make structural repairs or alterations to the Premises in order to comply with any Laws unless the need for such repairs or alterations arises from (i) the specific manner and nature of Tenant's use or occupancy of the Premises, as distinguished from mere general office and laboratory use in compliance with the Permitted Use hereunder, (ii) any cause or condition created by or on behalf of the Tenant, including, without limitation, the performance of the Tenant Work and/or any other Alterations made by Tenant, or (iii) a breach by Tenant of any provisions of this Lease. Any of the foregoing conditions caused by any employee, agent, contractor, or subtenant of Tenant or any other party claiming by, through, or under Tenant shall be attributable to Tenant for purposes of this Lease. Tenant shall also be responsible for the cost of compliance with all present and future Laws in respect of the Building to the extent arising from any of the causes set forth in **clauses (i)** through **(iv)** above of this **Section 7.2(b)**, in which event Tenant shall be responsible to perform, at Tenant's sole cost and expense, such repairs or alterations, whether or not such compliance requires work which is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen.

(c) If repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the same promptly, and if Tenant refuses or neglects to commence and complete such repairs within the applicable time period therefor set forth in **Section 14(a)(ii)** of this Lease (except in the case of Emergency, including without limitation, notice of an unsafe condition in the Premises, in which event Landlord may make such repairs immediately and without notice), Landlord may (but shall not be required to do so) make or cause such repairs to be made and the provisions of **Section 14.4** shall be applicable to the costs thereof. Landlord shall make a commercially reasonable effort to notify Tenant, which notification may be oral, of Landlord's exercise of its rights under this **Section 7.2(c)**.

7.3 Floor Load - Heavy Machinery.

(a) Tenant shall not place a load upon any floor in the Premises exceeding the limit such floor was designed to supports or such lower amount as may be proscribed by applicable Law. Landlord reserves the right to prescribe the weight and position of all business machines and mechanical equipment, including safes, which shall be placed so as to distribute the weight. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient, in Landlord's judgment, to absorb and prevent vibration, noise and annoyance. Tenant shall not move any safe, heavy machinery, heavy equipment, freight, bulky matter or fixtures into or out of the Building without Landlord's prior consent, which consent may include a requirement to provide insurance, naming Landlord as an insured, in such amounts as Landlord may deem reasonable.

(b) If any such safe, machinery, equipment, freight, bulky matter or fixtures requires special handling, Tenant agrees to employ only persons holding a Master Rigger's license to do such work, and that all work in connection therewith shall comply with applicable Laws. Any such moving shall be at the sole risk and hazard of Tenant, and Tenant will exonerate, indemnify and save Landlord harmless against and from any liability, loss, injury, claim or suit resulting directly or indirectly from such moving.

7.4 Utility Services.

(a) Tenant shall pay for all water (including the cost to service, repair and replace reverse osmosis, de-ionized and other treated water), gas, heat, light, power, telephone, internet service, cable television, other telecommunications and other utilities supplied to the Premises, together with any fees, surcharges and taxes thereon charged by the applicable utility provider. Electricity and gas supplied to the Premises shall each be separately metered, and chilled water and HVAC airflow for the Laboratory Systems shall be separately submetered or check metered. Tenant shall be entitled to use up to fourteen
(14) watts per usable square foot of the Laboratory Portion of the Premises and up to six
(6) watts per usable square foot of the Office Portion of the Premises of electrical power. Tenant shall be responsible for procuring and paying for separately metered utilities directly to the provider of the utilities. If any utility is not separately metered or submetered to Tenant, Tenant shall pay either Tenant's pro rata share, as the case may be, of all charges of such utility jointly metered with other premises, or Tenant's Occupied Laboratory Share (as hereinafter defined), as reasonably determined by Landlord, as Additional Rent or, in the alternative, Landlord may, at its option, monitor the usage of such utilities by Tenant and charge Tenant with the cost of purchasing, installing and monitoring such metering equipment, which cost shall be paid by Tenant as Additional Rent, unless such separate meters or submeters are installed as part of the Tenant Work, in which event the cost of installation shall be included in the cost of such work. Landlord may base its bills for utilities on reasonable estimates; provided that Landlord adjusts such billings to reflect the actual cost of providing utilities to the Premises no less than quarterly. To the extent that Tenant uses more than Tenant's Laboratory Share of any

utilities attributable to the Laboratory Systems or more than Tenant's Pro Rata Share of

the Office Portion of any utilities attributable to the Building Systems, then Tenant shall pay Landlord for Tenant's increased share of such utilities to reflect such excess.

(b) The following check meters have been installed for the Premises:
(i) the standard flow meter on each floor at the capped connection for non-potable cold water, (ii) the standard flow meter on the supply line and deductive meter on the return line at each floor, located at the capped connection, for non-potable hot water supply and return, (iii) the standard flow meter at each floor, located at the capped connection, for tempered water, (iv) polypropylene purified water meter on the supply line and deductive meter on the return line at each floor, located at the capped connection, for the RO/DI system, (v) Intentionally Omitted, (vi) mass flow meter at each floor, located at the capped connection, for the vacuum system, (vii) chilled water meters on the capped chilled water connections on each floor to meter supplemental chilled water usage, (viii) hot water meters on the capped hot water connections on each floor to meter hot water usage, and
(ix) condenser water meters on the capped condenser water connection on each floor to meter condenser water usage (collectively, the "**Tenant Installed Checkmeters**"). If Tenant desires to use the compressed air laboratory system, Tenant shall be responsible, at Tenant's expense, for the installation of a mass flow meter at each floor, located at the capped connection, for such compressed air. Tenant shall be responsible for the ongoing repair and maintenance of any Tenant Installed Checkmeters. Tenant shall also be responsible for providing bus tap, meter and meter socket at each floor for direct utility metering and an electronic check meter for tenant equipment connected to the Generator. In the event Tenant requires natural gas on any floor within the Premises, Tenant shall be required to request gas service installation from the utility provider and would be billed directly with a separate meter. Notwithstanding anything to the contrary contained herein, in no event shall Tenant be entitled to occupy all or any portion of the Premises until the Tenant Installed Checkmeters have been installed by Tenant and are fully operational. At Tenant's election, Tenant shall be entitled to include the installation of the Tenant Installed Checkmeters as part of the Tenant Work pursuant to **Exhibit D** but at Tenant's sole cost and expense.

(c) Notwithstanding anything in this Lease to the contrary, Tenant shall pay the cost of utilities used in the Premises based on the consumption thereof as metered by the applicable Tenant Installed Checkmeters and/or any separate meters or submeters installed by Tenant at the rates for the applicable utility then being charged by the applicable public utility (together with all taxes and fees included by the utility provider), without markup or any additional fees or charges added by Landlord.

(d) In the event any governmental entity promulgates or revises any Law, or issues mandatory controls relating to the use or conservation of energy, water, gas, light or electricity, or the provision of any other utility or service furnished by Landlord in the Building, Landlord may take any appropriate action to comply with such provision of Law or mandatory controls, including the making of alterations to the Building, subject, however, to the terms and conditions of this Lease. Tenant agrees to provide, within 10 Business Days of request by Landlord, such information and documentation as may be needed for compliance with any energy reporting or

sustainability requirements as may be adopted from time to time by the City of Boston or

any other governmental authority with jurisdiction over the Building, which information shall include, without limitation, usage at or by the Premises of electricity, natural gas, steam, hot or chilled water or other energy. Neither Landlord's actions nor its failure to act shall entitle Tenant to any damages, abate or suspend Tenant's obligation to pay Basic Rent and Additional Rent or constitute or be construed as a constructive or other eviction of Tenant except as otherwise specifically set forth herein. The parties hereto shall comply with all mandatory energy conservation controls and requirements applicable to the Building that are imposed or instituted by the federal, state, county or municipal governments and are of general applicability to the occupants of the Building, including, without limitation, controls on the permitted range of temperature settings in office/retail buildings, and requirements necessitating curtailment of the volume of energy consumption or the hours of operation of the Building. Any terms or conditions of this Lease that conflict or interfere with compliance with such controls or requirements shall be suspended for the duration of such controls or requirements. Compliance with such controls or requirements shall not be considered an eviction, actual or constructive, of Tenant from the Premises and shall not entitle Tenant to terminate this Lease or to an abatement of any Rent payable hereunder.

7.5 Other Services.

(a) For the Office Portion of the Premises only, Landlord shall provide Base Building heating, ventilation and air-conditioning ("**HVAC**") for heating and cooling as normal seasonal changes may require to provide reasonably comfortable space temperature and ventilation for occupants of the Office Portion of the Premises under normal business operation for general office use during Building Service Hours as defined below and substantially in accordance with the HVAC Specifications for the Office Portion of the Building attached hereto as **Exhibit J**. Landlord agrees to carry a separate maintenance contract on the HVAC units and/or systems, which maintenance contract cost shall be included as part of Operating Expenses. If Tenant shall require air conditioning, heating or ventilation outside the hours and days above specified for the Office Portion of the Premises, Landlord may furnish such service and Tenant shall pay therefor such charges as may from time to time be in effect for the Building (which overtime charge is $95.00 per hour) upon demand as Additional Rent. In the event Tenant introduces into the Premises personnel or equipment which overloads the capacity of the Building system or in any other way interferes with the system's ability to perform adequately its proper functions, supplementary systems may, if and as needed, at Landlord's option, be provided by Landlord, at Tenant's expense. "**Building Service Hours**" are 8:00 A.M. to 6:00 P.M. on Business Days and, upon at least 24 hours prior written request by Tenant, 8:00 A.M. to 1:00 P.M. on Saturdays, in all events, excluding the holidays set forth in **Section 1.1** of this Lease.

(b) For the Laboratory Portion of the Premises, Landlord shall provide Base Building HVAC for heating and cooling as normal seasonal changes may require to provide code required ventilation for occupants of the Laboratory Portion of the Premises under normal business operation for general laboratory use and substantially in accordance with the HVAC Specifications attached hereto as **Exhibit J** for the Laboratory Portion of the Building. Air will be supplied to the Office Portion of the Premises at 1 cfm

per

useable square foot of the Office Portion of the Premises and air will be supplied to the Laboratory Portion for the Premises at 1.5 cfm per useable square foot of the Laboratory Portion of the Premises.

(c) In the event Tenant introduces into the Premises personnel or equipment which overloads the capacity of the applicable Base Building HVAC system or in any other way adversely affects the applicable Base Building HVAC system's ability to perform adequately its proper functions, including, without limitation, Tenant's design, layout or occupancy level of the Premises in a manner which inhibits the HVAC system's ability to perform in accordance with the applicable HVAC specifications attached as exhibits to this Lease, Tenant may be required to install supplementary systems at Tenant's sole cost and expense in order to provide comfortable space temperature and ventilation in the applicable portion of the Premises, and Landlord shall not be deemed to be in default of Landlord's obligation under this **Section 7.5** to provide HVAC service to the Premises in accordance with **Exhibit J**, as applicable to the portion of the Premises at issue (i.e. the Office Portion or Laboratory Portion, as applicable), to the extent resulting from such interference or overloading by Tenant

(d) For the Laboratory Portion of the Premises, Landlord has installed (1) one (1) air handler unit per floor of the Laboratory Portion of the Premises and (2) an additional supplemental chiller system for the tenants of the Laboratory Portion located on the mechanical penthouse roof of the Building. Tenant, at its expense, may install its own heating, ventilation and air conditioning units ("**Tenant's HVAC Units**") in and serving the Premises, which Tenant's HVAC Units must be located within the bounds of the Premises. The Tenant's HVAC Units shall be compatible with the Building's mechanical system and shall be operated and maintained by Tenant at its expense. Tenant shall furnish and operate and maintain, at its expense, the pumps required to draw and return the condenser water required for Tenant's HVAC Units.

(e) Landlord shall provide condenser water of ten (10) tons to the Premises and Tenant shall pay Landlord's then standard condenser water charge for the Building for its use of such condenser water. Current charge is $303.00 per annum per ton of condenser water allocated to the Premises subject to increase from time to time during the Term. Tenant shall be responsible for pumping/circulating the supplied condenser water throughout the Premises. Tenant may, at its expense, connect the machinery and equipment of Tenant's HVAC Units to the Building air supply and return systems, condenser water supply and return and steam supply and condensate return lines at such locations, by such means and routing and otherwise in such manner as Landlord shall reasonably designate or approve.

(f) Landlord shall provide fresh air units exclusive to each floor within the Laboratory Portion for the supply of air to the Premises. Tenant shall be responsible for Tenant's pro rata share based on rentable square footage of the Premises, as the case may be, of all charges of Landlord for operating, repairing and maintaining fresh air units with other premises on the floor. By way of example, in the event Tenant leases a full floor its pro rata share for the fresh air unit on that floor is one hundred percent (100%).

(g) Landlord shall provide water (at temperatures supplied by the city in which the Property is located) for drinking, lavatory and toilet purposes ("**Potable Water**") for the Premises and non-potable hot water for Tenant's laboratory use ("**Non Potable Water**"). Such water shall be made available from the main connection point for such service on the floor on which the Premises is located and the distribution of water (both Potable Water and Non-Potable Water) within the Premises shall be performed by Tenant. If Tenant uses Potable Water for any purpose other than for ordinary lavatory and drinking purposes, Landlord may assess a reasonable charge for the additional water so used, or upon advance written notice to Tenant install a water meter and thereby measure Tenant's water consumption for all purposes. In the latter event, Tenant shall pay the cost of the meter and the cost of installation thereof as Additional Rent upon demand and shall keep such meter and installation equipment in good working order and repair. Tenant agrees to pay for water consumed, as shown on such meter (at the rates then charged by the public utility, together with all sewer charges, taxes and fees), together with the sewer charge based on such meter charges, as and when bills are rendered, and in the event Tenant fails timely to make any such payment, Landlord may pay such charges and collect the same from Tenant upon demand as Additional Rent. Notwithstanding anything to the contrary contained in this Section, Tenant shall be responsible for Tenant's Laboratory Share of the costs associated with the Non Potable Water.

(h) Cleaning and janitorial services to the Common Areas. Tenant shall be responsible for all cleaning and janitorial services to the Premises, consistent with such services performed by office and laboratory tenants of Comparable Buildings. Subject to the labor harmony requirements in this Lease and Landlord's reasonable approval, Tenant may utilize any qualified cleaning and janitorial contractors to provide these cleaning services to the Premises.

(i) Access to the Premises and the Parking Garage 24 hours per day, 7 days per week, and 365 days per year, subject to security and safety precautions from time to time in effect, if any, and subject always to restrictions based on emergency conditions.

(j) Passenger elevator service in common with Landlord and other tenants in the Building 24 hours per day, 7 days per week, and 365 days per year. Tenant shall have access, on a non-exclusive, first-come, first-serve basis, to freight elevators serving the Building, at no additional charge during the Building's normal freight hours.

(k) A compactor to be available to tenants of the Building for the disposal of trash and non-hazardous materials.

(l) Landlord may from time to time, but shall not be obligated to, as part of Operating Expenses, provide one or more attendants in or about the common areas of the Building. Tenant expressly acknowledges and agrees that, if provided: (i) such attendants shall not serve as police officers, and will be unarmed, and will not be trained in situations involving potentially physical confrontation; and (ii) such attendants will be solely an amenity to tenants of the Building for purposes such as assisting visitors and invitees of tenants and others in the Building, monitoring fire control and alarm equipment, and summoning emergency services to the Building as and when needed, and

not for the purpose of securing any individual tenant premises or guaranteeing the physical safety of Tenant's Premises or of Tenant's employees, agents, contractors or invitees. If and to the extent that Tenant desires to provide security for the Premises or for such persons or their property, Tenant shall be responsible for so doing, after having first consulted with Landlord and after obtaining Landlord's consent, which shall not be unreasonably withheld, conditioned or delayed. Landlord expressly disclaims any and all responsibility and/or liability for the physical safety of Tenant's property, and for that of Tenant's employees, agents, contractors and invitees, and, without in any way limiting the operation of **Article 10** hereof, Tenant, for itself and its agents, contractors, invitees and employees, hereby expressly waives any claim, action, cause of action or other right which may accrue or arise as a result of any damage or injury to the person or property of Tenant or any such agent, invitee, contractor or employee except, with respect to personal injury only, if and to the extent caused by Landlord's negligence or willful misconduct.
Tenant agrees that, as between Landlord and Tenant, it is Tenant's responsibility to advise its employees, agents, contractors and invitees as to necessary and appropriate safety precautions.

(m) The Building is serviced by a common laboratory waste sanitary sewer connection from the pH neutralization room on the third (3rd) floor of the Building to the municipal sewer line in the street adjacent to the Building. Landlord has installed a separate ph neutralization tank (the "**ph Neutralization Tank**") for common use by tenants and occupants of the Laboratory Portion of the Building and, in connection therewith, Landlord has obtained and maintains a single discharge permit from the MWRA on behalf of the tenants using such ph Neutralization Tank (the "**Lab System MWRA Permit**"). Any and all costs for Landlord to maintain the Lab System MWRA Permit (including renewals) shall be included in the Laboratory Operating Expenses. Tenant shall not introduce anything into the ph Neutralization Tank or the sewer system serving the Building (x) in violation of the terms of the Lab System MWRA Permit, (y) in violation of applicable Laws or (z) that would interfere with the proper functioning of the ph Neutralization Tank or the sewer system serving the Building. Tenant shall provide Landlord, within ten (10) Business Days of such request by Landlord, with any kind of information with respect to the chemicals and other materials used and disposed of via the ph Neutralization Tank. Tenant shall, prior to the date Tenant commences occupancy of any portion of the Premises and to the extent not already installed, install at least one sampling port in the Premises at the central drain connecting the Premises to the pH Neutralization Tank. During the Term, Tenant shall inspect and sample the sampling ports in the Premises with reasonable frequency in accordance with best management practices and keep reasonably detailed logs of such inspections and sampling. Upon Landlord's reasonable request, Tenant shall permit Landlord to inspect and make copies of such logs and, if Landlord reasonably determines necessary, to perform Landlord's own inspection and sampling of the sampling ports in the Premises. Landlord has delivered to Tenant a copy of the Lab System MWRA Permit along with its associated permit conditions and monitoring requirement, so that Tenant may understand its compliance obligations, if any. Within a reasonable time following receipt of a written request from Tenant, Landlord agrees to promptly provide to Tenant a copy of the operating manual for the ph Neutralization Tank and the discharge monitoring reports for the prior Lease Year in Landlord's possession. If Landlord receives a written violation notice with respect to

the Lab System MWRA Permit, then Landlord agrees, within a reasonable time following receipt of a written request from Tenant, to provide Tenant with a copy of any pertinent documentation pertaining to Landlord's maintenance and repair of the pH Neutralization Tank. Landlord will provide a connection point and tap and Tenant shall be responsible, as part of the Tenant Work, to connect the Premises to the ph Neutralization Tank. Tenant shall have a non-exclusive right to use Tenant's Laboratory Share of the ph Neutralization Tank in accordance with applicable Laws in common with other tenants of the Laboratory Portion. Tenant shall reimburse Landlord for all costs, charges and expenses incurred by Landlord from time to time in connection with or arising out of the operation, use, maintenance, repair or refurbishment of the ph Neutralization Tank, including all clean-up costs relating to the ph Neutralization Tank (collectively, "**Tank Costs**"); provided, however, that if the ph Neutralization Tank is being used by other tenant(s) or occupant(s) of the Laboratory Portion of the Building at any time during the Term, then Tenant shall only be obligated to pay its proportionate share of the Tank Costs, as determined by Landlord in accordance with, as reasonably determined by Landlord, either Tenant's Laboratory Share or Tenant's Occupied Laboratory Share, if applicable, of the Tank Costs. Notwithstanding the foregoing, in the event the ph Neutralization Tank or the pH neutralization room is damaged or repairs to the ph Neutralization Tank or the pH neutralization room are required solely as a result of the improper use of either the ph Neutralization Tank or the pH neutralization room by Tenant, Tenant shall be responsible for one hundred percent (100%) of the cost of any repairs or replacement required as a result of such improper use by Tenant, regardless of whether the ph Neutralization Tank is then being used by other tenant(s) or occupant(s) of the Building. Landlord shall be responsible, as part of Laboratory Operating Expenses, for compliance with any and all Lab System MWRA Permit conditions not directly allocable to any specific tenant. Except to the extent arising from the negligence or willful misconduct of Landlord or Landlord Parties, or their respective agents or employees, Tenant shall defend with counsel first reasonably approved by Landlord, save harmless, and indemnify Landlord and Landlord Parties from and against all claims losses, cost, damages, any liability or expense of whatever nature arising from injury, loss, accident or damage to any person or property, to the extent arising from or claimed to have arisen from Tenant's use of the ph Neutralization Tank in violation of the Lab System MWRA Permit until the expiration of the Term of the Lease and thereafter so long as Tenant is in occupancy of any part of the Premises. This indemnity and hold harmless agreement shall include indemnity against all losses, costs, damages, expenses and liabilities incurred in or in connection with any such claim or any proceeding brought thereon, and the defense thereof, including, without limitation, claims and liability to the Massachusetts Water Resources Authority, and reasonable attorneys' fees and costs at both the trial and appellate levels. The provisions of this Section 7.5(m) shall survive the expiration or earlier termination of the Lease.

(n) Landlord has installed a back-up generator at the Property (the "**Generator**"), with capacity for Tenant to connect its laboratory equipment load of up to 40kw (the "**Tenant's Generator Capacity**"). Tenant shall be entitled to use, at any time during the Term, up to Tenant's Generator Capacity of power from the Generator on a non-exclusive basis with other tenants in the Building; provided, however, in no event shall Tenant's equipment connected to the Generator exceed four (4) watts per usable square foot of the Laboratory Portion of the Premises. Any back-up power needs

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Tenant in excess of Tenant's Generator Capacity shall be Tenant's responsibility, including Tenant's laboratory equipment, and notwithstanding Landlord's approval of Tenant's Space Plan or Construction Documents in accordance with **Exhibit D**. Tenant shall reimburse Landlord for Tenant's Laboratory Share of all costs, charges and expenses incurred by Landlord from time to time in connection with or arising out of the operation, use, maintenance, repair or refurbishment of the Generator, including, the costs for fuel, permitting, inspection and testing (collectively, "**Generator Costs**"); provided, however, that if the Generator is being used by other tenant(s) or occupant(s) of the Laboratory Portion of the Building at any time during the Term, then Tenant shall only be obligated to pay Tenant's Occupied Laboratory Share of the Generator Costs. Landlord expressly disclaims any warranties with regard to the Generator or the installation thereof, including any warranty of merchantability or fitness for a particular purpose. Landlord shall maintain and repair the Generator so as to keep same in good working condition as part of Generator Costs, but shall not be liable for any failure to make any repairs or to perform any maintenance that is an obligation of Landlord unless such failure shall persist for an unreasonable time after Tenant provides Landlord with written notice of the need for such repairs or maintenance.

(o) As part of the Laboratory Systems, Tenant shall be allowed to utilize up to Tenant's Laboratory Share of space in the chemical storage room within the specified zone in the basement level of the Building (the "**Chemical Storage Room**") for chemical storage. The Chemical Storage Room shall be designated by the Uniform Building Code ("**UBC**") as a "B" occupancy area for the use and storage of Hazardous Materials. If the use of Hazardous Materials by Tenant requires fire control areas or chemical storage areas in excess of Tenant's Laboratory Share, then Tenant shall, at its sole cost and expense and upon Landlord's written request, establish and maintain a separate area of the Premises classified by the UBC as a "B" occupancy area for the use and storage of Hazardous Materials, or take such other action as is necessary to ensure that its share of the fire control areas or chemical storage areas of the Building is not greater than Tenant's Laboratory Share. Notwithstanding anything in this Lease to the contrary, Landlord shall not have and expressly disclaims any liability (unless arising from Landlord's negligence or willful misconduct) related to Tenant's or other tenants' use or disposal of Hazardous Materials within the Chemical Storage Room, it being acknowledged by Tenant that Tenant and other tenants are best suited to evaluate the safety and efficacy of its Hazardous Materials usage and procedures in the Premises and in the Chemical Storage Room.

(p) Tenant shall indemnify, save, defend (at Landlord's option and with counsel reasonably acceptable to Landlord) and hold the Landlord Parties harmless from and against any and all claims, losses, cost, damages any liability or expense of whatever nature ("**Claims**"), including (a) diminution in value of the Property or any portion thereof, (b) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, and (c) and (c) sums paid in settlement of Claims that arise during or after the Term as a result of Tenant's improper use of any Laboratory Systems, the ph Neutralization Tank, the Chemical Storage Room or Generator. This indemnification by Tenant includes the reasonable costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration

required by any governmental authority caused by Tenant's improper use of the Laboratory Systems, ph Neutralization Tank, the Chemical Storage Room or Generator.

7.6 Interruption of Service.

(a) Landlord reserves the right to curtail, suspend, interrupt and/or stop the supply of water, sewage, electrical current, cleaning, and other services, and to curtail, suspend, interrupt and/or stop use of entrances and/or lobbies serving access to the Building, or other portions of the Property, without thereby incurring any liability to Tenant, when necessary by reason of accident or emergency, or for repairs, alterations, replacements or improvements in the judgment of Landlord reasonably exercised desirable or necessary, or when prevented from supplying such services or use due to any act or neglect of Tenant or Tenant's agents employees, contractors or invitees or any person claiming by, through or under Tenant or by Force Majeure, including, but not limited to, strikes, lockouts, difficulty in obtaining materials, accidents, laws or orders, or inability, by exercise of reasonable diligence, to obtain electricity, water, gas, steam, coal, oil or other suitable fuel or power. Except as otherwise set forth in **Section 7.6(b)** below, no diminution or abatement of rent or other compensation, nor any direct, indirect or consequential damages shall or will be claimed by Tenant as a result of, nor shall this Lease or any of the obligations of Tenant be affected or reduced by reason of, any such interruption, curtailment, suspension or stoppage in the furnishing of the foregoing services or use, irrespective of the cause thereof. Except as otherwise expressly provided in this Lease, the failure or omission on the part of Landlord to furnish any of the foregoing services or use as provided in this paragraph shall not be construed as an eviction of Tenant, actual or constructive, nor entitle Tenant to an abatement of Rent, nor to render the Landlord liable in damages, nor release Tenant from prompt fulfillment of any of its covenants under this Lease. Notwithstanding anything herein to the contrary, in each instance of stoppage, Landlord shall exercise reasonable diligence to eliminate the cause thereof and, except in case of emergency repairs, Landlord will give Tenant reasonable advance notice of any contemplated stoppage and will use reasonable efforts to avoid unnecessary inconvenience to Tenant by reason thereof.

(b) Notwithstanding the foregoing, if (i) an interruption or curtailment, suspension or stoppage of an Essential Service (as said term is hereinafter defined) shall occur, except if any of the same is due to any act or neglect of Tenant or Tenant's agents employees, contractors or invitees or any person claiming by, through or under Tenant, or is an event which is covered by the provisions of **Article 11** of this Lease (any such interruption of an Essential Service being hereinafter referred to as a "**Service Interruption**"), and (ii) such Service Interruption is within the reasonable control of Landlord to remedy (and Landlord is not impeded by reason of any Force Majeure), and
(iii) as a result of such Service Interruption, the Premises becomes untenantable so that for the Eligibility Period (as hereinafter defined) Tenant is unable to and does not in fact conduct its business in the affected portion of the Premises during the entirety of the Eligibility Period by reason of such untenantability, then there shall be an abatement of one day's Basic Rent and Additional Rent (but not any of the Monthly Improvement Costs Payments) for each day during which such Service Interruption continues after the Eligibility Period until such date that the Premises or the affected portion thereof shall be

rendered tenantable (or such earlier date, if any, as Tenant shall reoccupy the Premises or the affected portion thereof for the conduct of its business); provided, however, that if any part of the Premises is reasonably useable for Tenant's normal business operations or if Tenant conducts all or any part of its operations in any portion of the Premises notwithstanding such Service Interruption, then the amount of each daily abatement of Basic Rent shall only be proportionate to the nature and extent of the interruption of Tenant's normal operations or ability to use the Premises. For the purposes hereof, the "**Eligibility Period**" shall be defined as five (5) consecutive Business Days after Landlord's receipt of written notice from Tenant of the condition causing untenantability in the Premises. For purposes hereof, the term "**Essential Services**" shall mean the following services in accordance with Landlord's obligations under this Lease: passenger elevator service, water and sewer/septic service, HVAC, electricity and the Laboratory Systems. The remedies set forth in this **Section 7.6(b)** shall be Tenant's sole remedy on account of a Service Interruption and this **Section 7.6(b)** shall not apply in the event of untenantability caused by fire or other casualty or taking (which shall be subject to the terms and conditions of **Article 11** below). A Service Interruption will not be deemed to have occurred if Tenant introduces into the Premises personnel or equipment which overloads the capacity of the Building systems or in any other way interferes with any building system's ability to perform its proper functions, including, without limitation, Tenant's design, layout or occupancy level of the Premises in a manner which inhibits the HVAC system's ability to perform properly in the manner designed.

7.7 **Force Majeure**. If either party shall be prevented or delayed from punctually performing any obligations or satisfying any condition under this Lease as a result of a Force Majeure event, then the time to perform such obligation to satisfy such condition shall be extended on a day for day basis for the period of the delay caused by such event; provided, however, that the party claiming the benefit of this provision shall, as a condition thereto, give notice to the other party in writing within ten (10) days of the incident specifying with particularity the nature thereof, the reason therefor, the date and time such incident occurred and a reasonable estimate of the period that such incident will delay the fulfillment of obligations contained herein. Failure to give such notice within the specified time shall render such delay invalid in extending the time for performing the obligations hereunder. This **Section 7.7** and Force Majeure events shall expressly not apply to, excuse or postpone Tenant's obligation to pay any Base Rent, Additional Rent or other amounts payable by Tenant under this Lease, or Tenant's obligations under the Lease to give notice with respect to any option explicitly set forth in this Lease, to surrender the Premises as and when required by this Lease, or to maintain insurance as required by this Lease.

ARTICLE 8 INTENTIONALLY OMITTED

ARTICLE 9
BUILDING OPERATING EXPENSES AND LABORATORY OPERATING EXPENSES

9.1 **Definitions**. "**Operating Year**" shall mean each calendar year all or any part of which falls within the Term, "**Building Operating Expenses**" shall mean the aggregate costs

and expenses incurred by Landlord with respect to the operation, administration, cleaning, insuring, repair, maintenance and management of the Building and the Building's allocable share of costs with respect to the Common Facilities of the Complex, including, without limitation, the costs and expenses set forth in **Exhibit F** attached hereto as Building Operating Expenses (but excluding the Laboratory Operating Expenses), and "**Laboratory Operating Expenses**" shall mean the aggregate costs and expenses incurred by Landlord with respect to the operation, administration, cleaning, insuring, repair, maintenance and management of the Laboratory Portion of the Building and the Laboratory Systems, including, without limitation, the costs and expenses set forth in **Exhibit F** attached hereto as Laboratory Operating Expenses (but excluding the Building Operating Expenses). If during any portion of the Operating Year for which Building Operating Expenses are being computed, less than ninety-five percent (95%) of the Building was occupied by tenants or Landlord was not supplying all tenants with the services being supplied under this Lease, actual Operating Expenses incurred shall be extrapolated reasonably by Landlord on an item by item basis to the estimated Building Operating Expenses that would have been incurred if the Building were at least ninety-five percent (95%) occupied for such Operating Year and such services were being supplied to all tenants, and such extrapolated amount shall, for the purposes hereof, be deemed to be the Building Operating Expenses for such Operating Year. Only those Operating Expenses that are affected by variation in occupancy levels shall be so "grossed-up". In the event that the Laboratory Portion is less than fully occupied, or any tenants or occupants have elected not to use any of the Laboratory Systems during any portion of the Term, Tenant acknowledges that during such time, rather than allocating such expenses based on Tenant's Laboratory Share, Landlord will allocate certain Laboratory Operating Expenses and charges to Tenant based on the ratio of the total rentable area of the Premises designed for laboratory use (as determined based on Tenant's final as-built interior laboratory construction plans for the Premises approved by Landlord) to the total rentable area of the Laboratory Portion leased to tenants that are using that Laboratory System ("**Tenant's Occupied Laboratory Share**"), as reasonably determined by Landlord. Landlord shall have the right to recalculate the Tenant's Occupied Laboratory Share from time to time as occupancy of the Laboratory Portion changes. Except as expressly provided herein, or approved by Landlord, Tenant shall only be entitled to use Tenant's Laboratory Share of the Laboratory Systems, regardless of whether Tenant is paying Tenant's Occupied Laboratory Share or Pro Rata Share of Laboratory Portion of the costs thereof. If and to the extent the Property includes other buildings as part of a larger project or development, Landlord shall have the right to allocate to each building on the Property, including the Building, an equitable portion of the costs and expenses for the Common Facilities of the Property, in accordance with its good faith business judgment, and the allocable portion of such costs and expenses shall be included in Building Operating Expenses hereunder.

Landlord shall have the right, from time to time, to equitably allocate some or all of the Building Operating Expenses for the Building among different portions or occupants of the Building (the "**Cost Pools**"), in Landlord's reasonable discretion. Such Cost Pools may include, but shall not be limited to, the office space tenants of the Building, the laboratory space tenants of the Building and the retail space tenants of the Building and Tenant's Pro Rata Share of the Office Portion for any costs included in a Cost Pool shall be calculated on the basis of the ratio of the rentable square footage of the Premises to the rentable square footage of the portions of the Building included in such Cost Pool. If any space in the Building is converted from retail space to office space and/or laboratory space, as applicable, then the rentable area of the space in the

Building converted from retail space to office space and/or laboratory space, as applicable, shall be added to the denominator used to calculate Tenant's Pro Rata Share of the Office Portion for the remaining portion of that calendar year and subsequent calendar years. Likewise if any space in the Building is converted from office space and/or laboratory space, as applicable, to retail space, then the rentable area of the space in the Building converted from office space and/or laboratory space, as applicable, to retail space shall be deducted from the denominator used to calculate Tenant's Pro Rata Share of the Office Portion for the remainder of such calendar year and subsequent calendar years.

9.2 **Tenant's Payment of Operating Expenses**.

(a) From and after the Commencement Date, Tenant shall pay to Landlord, as Additional Rent:

(i) an amount equal to (y) the Building Operating Expenses multiplied by (z) Tenant's Pro Rata Share of the Office Portion, such amount to be apportioned for any portion of an Operating Year in which the Commencement Date falls or the Term of this Lease ends; and

(ii) an amount equal to (y) the Laboratory Operating Expenses multiplied by (z) Tenant's Laboratory Share (or, if applicable per **Section 9.1**, Tenant's Occupied Laboratory Share), such amount to be apportioned for any portion of an Operating Year in which the Commencement Date falls or the Term of this Lease ends.

(b) Estimated payments by Tenant on account of Building Operating Expenses and Laboratory Operating Expenses shall be made on the first day of each and every calendar month during the Term of this Lease, in the fashion herein provided for the payment of Basic Rent. The monthly amount so to be paid to Landlord shall be sufficient to provide Landlord by the end of each Operating Year a sum equal to Tenant's required payment, as reasonably estimated by Landlord from time to time during each Operating Year, on account of Building Operating Expenses and Laboratory Operating Expenses for such Operating Year. After the end of each Operating Year, Landlord shall submit to Tenant a reasonably detailed accounting of Building Operating Expenses and Laboratory Operating Expenses for such Operating Year, and Landlord shall certify to the accuracy thereof. If estimated payments theretofore made for such Operating Year by Tenant exceed Tenant's required payment on account thereof for such Operating Year according to such statement, Landlord shall credit the amount of overpayment against subsequent obligations of Tenant with respect to Building Operating Expenses and Laboratory Operating Expenses (or promptly refund such overpayment if the Term of this Lease has ended and Tenant has no further obligation to Landlord); but if the required payments on account thereof for such Operating Year are greater than the estimated payments (if any) theretofore made on account thereof for such Operating Year, Tenant shall make payment to Landlord within thirty (30) days after being so advised by Landlord, and the obligation to make such payment for any period within the Term shall survive expiration of the Term.

(c) Any such accounting by Landlord shall be binding and conclusive upon Tenant unless within one hundred twenty (120) days after Tenant's receipt of such accounting from Landlord Tenant shall notify Landlord that Tenant intends to undertake an audit of such of Landlord's books as are directly relevant to the Building Operating Expenses and Laboratory Operating Expenses accounting for the Operating Year in question, provided and on condition that (i) there is then no uncured Event of Default under this Lease, (ii) Tenant has made all payments of Additional Rent billed or invoiced by Landlord as of the date of the audit, (iii) the audit is performed only by Tenant's employees, internal accounting department or an independent certified public accounting firm or, commercial real estate broker or experienced operating expense review firm such as Cyberlease, all as reasonably approved by Landlord, and provided and on the express condition that such reviewer's fee or other compensation is fixed by contract and is in no manner computed or determined based upon the results of the audit, (iv) both Tenant and its examiners execute and deliver to Landlord a commercially reasonable confidentiality agreement in form and substance reasonably acceptable to Landlord whereby such parties expressly agree to maintain the results of such audit in strict confidence (except disclosures to Tenant's officers, employees, attorneys, lenders, investors and/or as required by a court of competent jurisdiction) , and (v) such audit is commenced and completed and the results thereof delivered to Landlord within ninety (90) days following the date Landlord makes its books available to Tenant at Landlord's offices at the Boston Landing Project. If Tenant fails to timely deliver a dispute notice to Landlord, or fails to complete its audit and deliver the results thereof to Landlord within the applicable ninety (90) day period, then, in either of such events, Landlord's accounting shall be binding and conclusive upon Tenant for all purposes of this Lease. If it is finally determined by such auditor or mutually agreed by the parties that Landlord has overstated the applicable Tenant's Pro Rata Share of the Building Operating Expenses or Laboratory Operating Expenses, Landlord shall credit within thirty (30) days following such resolution the amount of such overstatement against the monthly installments of Additional Rent next due under this Lease (or refund within thirty (30) days following such resolution such amount to Tenant if the Term has ended and Tenant has no further obligations to Landlord under this Lease. If it is finally determined by mutual agreement or other legal proceeding that Landlord understated the Additional Rent payable by Tenant, then Landlord may invoice Tenant for any amount by which Tenant's payments under this **Section 9.2** was understated, which invoice shall be payable by Tenant within thirty (30) days after receipt of such invoice. In the event that it is determined by mutual agreement or legal proceeding that Landlord's Building Operating Expenses or Laboratory Operating Expenses were overstated by more than five percent (5%), Landlord shall reimburse Tenant for its reasonable out of pocket audit costs (not to exceed $5,000.00).

ARTICLE 10
INDEMNITY AND PUBLIC LIABILITY INSURANCE

10.1 Indemnity.

(a) Subject to the waiver of subrogation in **Sections 10.5** and **15.3, e**xcept to the extent arising from the negligence or willful misconduct of Landlord or

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agents, employees or contractors, Tenant shall defend with counsel first reasonably approved by Landlord, save harmless, and indemnify Landlord and Landlord's managing agent, beneficiaries, partners, members, shareholders, subsidiaries, officers, directors, agents, trustees and employees ("**Landlord Parties**") from and against all, claims losses, cost, damages, any liability or expense of whatever nature arising from injury, loss, accident or damage to any person or property, to the extent arising from or claimed to have arisen (a) from any accident, injury or damage whatsoever to any person, or to the property of any person, occurring in the Premises; (b) from the omission (where there is a duty to act), fault, willful act, negligence or other misconduct of Tenant or Tenant's agents, employees, contractors, licensees or invitees, (c) in connection with Tenant's use of the Premises or any business conducted therein or any work done or condition created in the Premises by Tenant, its agent, employees or contractors, or anyone claiming by, through or under Tenant, or (d) the failure of Tenant to perform and discharge its covenants and obligations under this Lease and, in any case, occurring after the Commencement Date (or such earlier date as of which Tenant takes possession of the Premises) until the expiration of the Term of this Lease and thereafter so long as Tenant is in occupancy of any part of the Premises. This indemnity and hold harmless agreement shall include indemnity against all losses, costs, damages, expenses and liabilities incurred in or in connection with any such claim or any proceeding brought thereon, and the defense thereof, including, without limitation, reasonable attorneys' fees and costs at both the trial and appellate levels. The provisions of this **Section 10.1(a)** shall survive the expiration or earlier termination of this Lease.

(b) Subject to the waiver of subrogation in **Sections 10.5** and **15.3**, except to the extent arising from the negligence or willful misconduct of Tenant or anyone claiming by, through or under Tenant (the "**Tenant Parties**"), from and against all claims of any third party arising from any accident, injury or damage whatsoever to any person, or to the property of any person, where such accident, damage or injury results or is claimed to have resulted from (i) the gross negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors, or (ii) if Landlord exercises its recapture rights pursuant to **Section 6.5** of this Lease, any accident, injury or damage whatsoever to any person, or to the property of any person, occurring in the recaptured portion of the Premises after Tenant's delivery of possession to Landlord, together with reasonable attorneys' fees incurred in connection with each such claim or action brought thereon; provided, however, in no event shall this indemnity apply to the extent any such claim arises from the negligence or willful misconduct of Tenant or any of the Tenant Parties. This indemnity and hold harmless agreement shall include indemnity against all losses, costs, damages, expenses and liabilities incurred in or in connection with any such claim or any proceeding brought thereon, and the defense thereof, including, without limitation, reasonable attorneys' fees and costs at both the trial and appellate levels. The provisions of this **Section 10.1(b)** shall survive the expiration or earlier termination of this Lease..

10.2 <u>Tenant Insurance</u>.

(a) Tenant agrees to maintain, at Tenant's expense, in full force from the date upon which Tenant first enters the Premises for any reason, throughout the Term

of this Lease, and thereafter so long as Tenant is in occupancy of any part of the Premises,

(a) commercial general liability insurance providing coverage for bodily injury, property damage and personal/advertising injury. Such policy shall include broad form contractual liability, clinical trial liability insurance coverage (which clinical trial coverage can be placed on separate, stand-alone policy) in at least the amounts of the Initial General Liability Insurance specified in **Section 1.1** or such greater amounts as Landlord in its reasonable discretion shall from time to time request, under which Tenant is named as an insured and Landlord, Landlord's property manager, any Superior Mortgagee and Superior Lessor, and such other persons as Landlord reasonably may request are named as additional insureds to the General Liability policy, (b) special form (formerly known as "all-risk") property insurance on a "replacement cost" basis, insuring Tenant's Removable Property and any alterations, additions and improvements located from time to time in the Premises, whether made by Tenant pursuant to **Article 5**, **Exhibit D** or otherwise existing in the Premises as of the Commencement Date (such alterations, additions and improvements collectively the "**Improvements**"), (c) workers' compensation insurance with statutory limits, (d) employer's liability insurance with the following limits: bodily injury by disease per person $1,000,000.00; bodily injury by accident policy limit
$1,000,000.00; bodily injury by disease policy limit $1,000,000.00, (e) business automobile liability insurance including owned (if any), hired and non-owned automobiles, in an amount not less than One Million Dollars ($1,000,000) combined single limit per occurrence, (f) business interruption insurance insuring interruption or stoppage of Tenant's business at the Premises for a period of not less than twelve (12) months, including leasehold interest coverage insuring Tenant's ongoing lease obligations, and (g) umbrella or excess liability insurance with limits of $5,000,000 aggregate, providing coverage over and above the commercial general liability, employer's liability and automobile insurance policies noted above. In addition, Tenant shall be required to maintain Pollution Legal Liability insurance with limits of not less than $1,000,000 per incident with a $2,000,000 policy aggregate and for a period of two (2) years thereafter, naming Landlord and the Landlord Parties as additional insureds. Such Pollution Legal Liability coverage shall (1) include bodily injury, sickness, disease, death or mental anguish or shock sustained by any person; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; and defense costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages, and (2) apply to both sudden and non- sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the Commencement Date of this Lease, and coverage is continuously maintained during all periods in which Tenant occupies the Premises.

(b) Aggregate limits under Tenant's commercial general liability and excess/umbrella liability policies set forth in **Section 10.2 (a)** shall apply on a "per location" basis via endorsement under each policy. Tenant's insurance shall include appropriate endorsements providing that the insurance shall be primary to, and not

contributory with any insurance carried by Landlord, whose insurance shall be considered

excess only. Each policy required hereunder shall be non-cancelable and non-amendable with respect to Landlord and Landlord's said designees without thirty (30) days' prior notice, with the exception of cancellation for non-payment of premium which shall be ten
(10) day notice. The policies of insurance required to be maintained by Tenant hereunder shall be issued by companies domiciled in the United States and qualified and licensed to conduct business in the state in which the Property is located and shall be rated A:X or better in the most current issue of A.M Best's Key Rating Guide (or any successor thereto). At all times during the Term, such insurance shall be maintained, and Tenant shall cause a current and valid certificate of such policies to be deposited with Landlord. If Tenant fails to have a current and valid certificate of such policies on deposit with Landlord at all times during the Term and such failure is not cured within three (3) Business Days following Tenant's receipt of notice thereof from Landlord, Landlord shall have the right, but not the obligation, to obtain such an insurance policy, and Tenant shall be obligated to pay Landlord the amount of the premiums applicable to such insurance within ten (10) days after Tenant's receipt of Landlord's request for payment thereof. Tenant's insurance policies shall not include deductibles in excess of Five Thousand Dollars ($5,000.00).

10.3 **Tenant's Risk**. Tenant agrees to use and occupy the Premises and to use such other portions of the Property as Tenant is herein given the right to use at Tenant's own risk. Landlord shall not be liable to Tenant, its employees, agents, invitees or contractors for any damage, injury, loss, compensation, or claim (including, but not limited to, claims for the interruption of or loss to Tenant's business) based on, arising out of or resulting from any cause whatsoever, including, but not limited to, repairs to any portion of the Premises or the Property, any fire, robbery, theft, mysterious disappearance and/or any other crime or casualty, the actions of any other tenants of the Building or of any other person or persons, or any leakage in any part or portion of the Premises or the Building, or from water, rain or snow that may leak into, or flow from any part of the Premises or the Building, or from drains, pipes or plumbing fixtures in the Building, unless due to the gross negligence or willful misconduct of Landlord or Landlord's agents, contractors or employees. Any goods, property or personal effects stored or placed in or about the Premises shall be at the sole risk of Tenant, and neither Landlord nor Landlord's insurers shall in any manner be held responsible therefor. Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connecting with the Premises or any part of the Property or otherwise. Notwithstanding the foregoing, and to the extent permitted by Law, Landlord shall not be released from liability for any injury, loss, damages or liability to the extent arising from any gross negligence or willful misconduct of Landlord, its servants, employees or agents acting within the scope of their authority on or about the Premises; provided, however, that in no event shall Landlord, its servants, employees or agents have any liability to Tenant based on any loss with respect to or interruption in the operation of Tenant's business. The provisions of this **Section 10.3** shall be applicable from and after the execution of this Lease and until the end of the Term of this Lease, and during any additional period as Tenant may use or be in occupancy of any part of the Premises or of the Building.

10.4 **Landlord's Insurance**. Landlord shall maintain, as a part of Building Operating Expenses, special form property insurance on the Building in such amounts and subject to such

deductibles as Landlord may reasonably determine. Such insurance shall be maintained with an insurance company selected by Landlord or a Superior Mortgagee, and payment for losses thereunder shall be made solely to Landlord subject to the rights of the Superior Mortgagee from time to time. Additionally, Landlord may maintain such additional insurance, including, without limitation, earthquake insurance, terrorism insurance, flood insurance, liability insurance and/or rent insurance, as Landlord may in its sole discretion elect. The cost of all such additional insurance shall also be part of the Building Operating Expenses. Any or all of Landlord's insurance may be provided by blanket coverage maintained by Landlord or any affiliate of Landlord under its insurance program for its portfolio of properties or by Landlord's or any affiliate of Landlord's program of self-insurance, and in such event Building Operating Expenses shall include the portion of the reasonable cost of blanket insurance or self-insurance that is allocated to the Building. In no event shall any self-insurance costs or retentions be charged to Tenant, except that Landlord's commercially reasonable deductible may be included in Building Operating Expenses.

10.5 **Waiver of Subrogation** Notwithstanding anything herein to the contrary, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action, or cause of action against the other, its agents, employees, licensees, or invitees for any loss or damage to Property, Improvements or personal property (located at the Premises) of such party therein or thereon by reason of fire, the elements, or any other cause which is covered, or would have been covered, by the property insurance coverages required to be maintained by Landlord and Tenant, respectively, under this Lease, regardless of cause or origin, including omission of the other party hereto, its agents, employees, licensees, or invitees. Each party shall look to its respective insurance coverage, and its deductibles and self-insurance or self-insured retentions (which shall be deemed insurance coverage for purposes of this **Section 10.5**), for recovery of any insured property damage. Landlord and Tenant covenant that no insurer shall hold any right of subrogation against either of such parties with respect thereto. The parties hereto agree that any and all such property insurance policies required to be carried by either shall be endorsed with a subrogation clause, substantially as follows: *"This insurance shall not be invalidated should the insured waive, in writing prior to a loss, any and all right of recovery against any party for loss occurring to the Complex described therein,"* and shall provide that such party's insurer waives any right of recovery against the other party in connection with any such loss or damage.

ARTICLE 11
FIRE, EMINENT DOMAIN, ETC.

11.1 **Landlord's Right of Termination**. If the Premises or the Building are substantially damaged (the term "substantially damaged" meaning damage of such a character that the same cannot, in the ordinary course, reasonably be expected to be repaired within two hundred ten (210) days from the time that repair work would commence, as determined in good faith by Landlord's architect) by fire or other casualty (each, a "**Casualty**"), then Landlord shall have the right to terminate this Lease by giving notice of Landlord's election so to do within ninety (90) days after the occurrence of such Casualty provided, however, that Landlord shall only be permitted to terminate this Lease on account of such damage if Landlord terminates the leases of at least 75% of the office tenants in the Building similarly affected by the casualty (where Landlord has a termination right thereunder). If Landlord exercises such termination

right, this Lease shall terminate thirty (30) days after the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof. In no event shall Landlord have any liability for damages to Tenant for inconvenience, annoyance or interruption of business arising from any Casualty.

11.2 Restoration; Tenant's Right of Termination

(a) If the Building or the Premises or any other improvements on or portions of the Complex including, without limitation, the Common Facilities shall be partially or totally damaged or destroyed by a Casualty and if this Lease is not terminated as provided in this **Article 11**, then (i) Landlord shall repair and restore the same to the condition prior to the Casualty, as applicable, (but excluding Tenant's Removable Property and the Improvements) (the "**Landlord's Restoration Work**") with reasonable dispatch (but Landlord shall not be required to perform the same on an overtime or premium pay basis) after notice to Landlord of the Casualty and the collection of the insurance proceeds attributable to such Casualty, and (ii) Tenant shall repair and restore in accordance with **Section 5.3** all of Tenant's Removable Property and the Improvements to the condition prior to the Casualty ("**Tenant's Restoration Work**"), with reasonable dispatch after the Casualty, following completion of Landlord's Restoration Work. Notwithstanding anything to the contrary contained herein, if in Landlord's sole discretion it would be appropriate for safety reasons, health reasons or the efficient operation or restoration of the Building or the Premises for Landlord to perform all or a portion of Tenant's Restoration Work on behalf of Tenant, then (x) Landlord shall give Tenant a written notice specifying the portion of Tenant's Restoration Work to be performed by Landlord (the "**Specified Restoration Work**"), (y) Landlord shall perform the Specified Restoration Work, and (z) Tenant shall pay to Landlord within ten (10) days following the giving of Landlord's written demand therefor (or Landlord shall retain from the insurance proceeds paid to Landlord in accordance with the last sentence of this **Section 11.2(a)**) the cost of such Specified Restoration Work.

(b) Landlord shall not carry any insurance on Tenant's Removable Property or on the Improvements (including without limitation any of the Tenant Work performed in connection with this Lease other than the Landlord's Work) that constitute part of Tenant's Restoration Work and shall not be obligated to repair or replace Tenant's Removable Property or such Improvements (whether or not installed by or at the expense of Landlord). Tenant shall look solely to its insurance for recovery of any damage to or loss of Tenant's Removable Property and any Improvements. Tenant shall notify Landlord promptly of any casualty in the Premises.

(c) Within ninety (90) days after the occurrence of any Casualty affecting the Premises or access thereto, Landlord shall deliver to Tenant a written estimate from a reputable contractor, architect or engineer designated by Landlord as to the probable length of time that will be necessary to substantially complete Landlord's Restoration Work ("**Estimated Completion Date**"). If such time estimate exceeds nine (9) months from the date that repair work would commence, Tenant shall have the right to terminate this Lease by giving notice to Landlord thereof within thirty (30) days after receipt of such estimate (time being of the essence with respect to the giving of such

notice by Tenant). If Tenant is entitled pursuant to the terms of this **Section 11.2(c)** to terminate this Lease and Tenant fails to deliver a termination notice to Landlord within the thirty (30) day period set forth herein, Tenant will be deemed to have waived Tenant's rights under this **Section 11.2(c)** to terminate the Lease on account of such Casualty. Notwithstanding the foregoing, in the event Landlord fails to complete Landlord's Restoration Work within sixty (60) days following the Estimated Completion Date, subject to Force Majeure and any Tenant Delay, Tenant shall have the right to terminate this Lease by giving notice to Landlord thereof within thirty (30) days after Landlord's failure to complete the Landlord's Restoration Work by the date which is sixty (60) days following the Estimated Completion Date. The provisions of this Section are in lieu of any statutory termination provisions allowable in the event of a Casualty.

(d) Except to the extent such damage by fire or other casualty is the result of any act or omission by Tenant, any subtenant or any of their respective partners, directors, officers, servants, employees, agents or contractors, if the Premises or the Building are substantially damaged by fire or other casualty, and this Lease is not otherwise terminated hereunder, and if Landlord's Restoration Work shall not be substantially completed within ninety (90) days after the time period set forth in Landlord's estimate for substantial completion of Landlord's Restoration Work as described in **Section 11.2(c)**, Tenant shall have the right to terminate this Lease by delivering at least thirty (30) days prior written notice to Landlord of such election which notice must be delivered within ten (10) Business Days after the expiration of such time period, provided, however, that if Landlord completes such restoration prior to the end of such thirty (30) day notice period, Tenant's notice of termination shall be deemed rescinded, and this Lease shall continue in full force and effect. If Tenant is entitled pursuant to the terms of this **paragraph (d)** to terminate this Lease and Tenant fails to deliver a termination notice to Landlord within the ten (10) Business Day period set forth herein, Tenant will be deemed to have waived Tenant's rights under this **paragraph (d)** to terminate the Lease on account of such Casualty.

(e) If this Lease is terminated under any of the provisions of this **Article 11** as a result of a Casualty, Landlord shall be entitled to retain for its benefit and Tenant shall promptly pay over to Landlord the proceeds of insurance maintained by Tenant on the Improvements after deducting only the amount Tenant's out-of-pocket, third party unamortized cost to initially construct any Improvements first made after the Commencement Date in excess of the amount of the Landlord's Contribution, with such amortization being done on a straight line basis over the initial Term of this Lease in accordance with GAAP. This **Section 11.2** shall be deemed an express agreement governing any damage or destruction of the Premises by fire or other casualty, and any law providing for a contingency in the absence of an express agreement, now or hereafter in force, shall have no application.

11.3 **Abatement of Rent**. If the Premises is damaged by a Casualty, Basic Rent and Expense Charges payable by Tenant shall abate proportionately for the period from the date of such fire or other casualty until the earlier of (a) the date that Landlord substantially completes Landlord's Restoration Work (provided that if Landlord would

have completed Landlord's Restoration Work at an earlier date but for Tenant having

failed to cooperate with Landlord in effecting such Work or collecting insurance proceeds and such failure continued for more than two (2) Business Days after receipt by Tenant of notice thereof, then the Premises shall be deemed to have been repaired and restored on such earlier date and the abatement shall cease), or (b) the date Tenant or other occupant reoccupies any portion of the Premises for the conduct of business (in which case the Basic Rent and Expense Charges allocable to such reoccupied portion shall be payable by Tenant from the date of such occupancy). Notwithstanding the foregoing, if by reason of any act or omission by Tenant, any subtenant or any of their respective partners, directors, officers, servants, employees, agents or contractors, Landlord, or any Mortgagee shall be unable to collect all of the insurance proceeds (including, without limitation, rent insurance proceeds) applicable to the casualty and such act or omission is not cured within five (5) business days after written notice from Landlord, then, without prejudice to any other remedies which may be available against Tenant, there shall be no abatement of Basic Rent or of Expense Charges.

11.4 Eminent Domain

(a) If the Premises shall be affected by any exercise of the power of eminent domain, Basic Rent, Expense Charges and all other charges payable by Tenant shall be justly and equitably abated and reduced according to the nature and extent of the loss of use thereof suffered by Tenant. In no event shall Landlord have any liability for damages to Tenant for inconvenience, annoyance or interruption of business arising from such exercise of the power of eminent domain.

(b) If more than 25% of the Building is taken by any exercise of the right of eminent domain, then Landlord or Tenant shall have the right to terminate this Lease (even if Landlord's entire interest in the Premises may have been divested) by giving notice of its election so to do within ninety (90) days after the occurrence of the effective date of such taking, whereupon this Lease shall terminate thirty (30) days after the date of such notice with the same force and effect as if such date were the date originally established for the expiration of the Term of this Lease.

(c) If any part of the Premises is taken and such taking will prevent Tenant from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such taking for a period of more than one hundred eighty (180) days, then Tenant may terminate this Lease as of the date of such taking by giving written notice to Landlord within thirty (30) days after the taking, and all Basic Rent, Expense Charges and all other charges payable by Tenant under this Lease shall be apportioned as of the date of such taking.

(d) If this Lease shall not be terminated pursuant to **Section 11.4(b)**, Landlord shall thereafter use due diligence to restore the Premises (excluding any Alterations made by Tenant pursuant to **Section 5.3**) to proper condition for Tenant's use and occupation, provided that Landlord's obligation shall be limited to the amount of compensation recoverable by Landlord from the taking authority. If, for any reason, such restoration shall not be substantially completed within six (6) months after the expiration of the ninety (90) day period referred to in **Section 11.4(b)** (which six month period may

be extended for such periods of time as Landlord is prevented from proceeding with or completing such restoration for any cause beyond Landlord's reasonable control, but in no event for more than an additional three (3) months), Tenant shall have the right to terminate this Lease by giving notice to Landlord thereof within thirty (30) days after the expiration of such period (as so extended). Upon the giving of such notice, this Lease shall cease and come to an end thirty (30) days after the giving of such notice, without further liability or obligation on the part of either party unless, within such thirty (30) day period, Landlord substantially completes such restoration. Such right of termination shall be Tenant's sole and exclusive remedy at law or in equity for Landlord's failure so to complete such restoration.

(e) Landlord shall have and hereby reserves and excepts, and Tenant hereby grants and assigns to Landlord, all rights to recover for damages to the Property and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking, and by way of confirming the foregoing, Tenant hereby grants and assigns, and covenants with Landlord to grant and assign to Landlord, all rights to such damages or compensation, and covenants to deliver such further assignments and assurances thereof as Landlord may from time to time request. Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for the value of any of Tenant's Removable Property installed in the Premises by Tenant at Tenant's expense and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable by Landlord from the taking authority.

ARTICLE 12 HOLDING OVER; SURRENDER

12.1 **Holding Over**. If Tenant or anyone claiming by, through or under Tenant shall remain in possession of all or any part of the Premises (which shall include Tenant's failure to comply with **Section 5.5(e)** of this Lease or a failure by Tenant to remove any Tenant's Removable Property or Alterations as required under this Lease) after the expiration or earlier termination of the Term of this Lease, such holding over shall be treated as a daily tenancy at sufferance at a Basic Rent equal to the greater of (i) the fair market rental rate for the Premises based upon the most recent comparable transactions for the Building and in transactions for comparable space on the same floor or above in Comparable Buildings, and (ii) (y) one hundred fifty percent (150%) of the Basic Rent in effect for the last rental period of the Term for the first thirty (30) days of Tenant's holdover, then (z) two hundred percent (200%) of the Basic Rent in effect for the last rental period of the Term for the period following the first thirty (30) days of Tenant's holdover, in all events plus Expense Charges and other Additional Rent herein provided (prorated on a daily basis). If any such holding over continues for more than thirty (30) days, then, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs and damages, direct and/or indirect, sustained by reason of any such holding over, including, without limitation, claims made by and loss of any succeeding tenant arising out of such failure to timely surrender possession in the condition required under this Lease. In all other respects, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable (and excluding

any extension, expansion or rights of first offer of tenant) in the Lease. Nothing contained in this **Article 12** shall be construed as a consent by Landlord to any holding over by Tenant, and Landlord shall have the right to immediately terminate such holding over pursuant to applicable Law. The provisions of this **Article 12** shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law.

12.2 **Surrender of Premises**. Upon the expiration or earlier termination of the Term of this Lease, Tenant shall promptly and peaceably quit and surrender to Landlord the Premises in neat and clean condition and in good order, condition and repair and consistent with Tenant's obligations under this Lease including the Hazardous Materials surrender obligations of **Section 5.5(e)** of this Lease, together with all Alterations which may have been made or installed in, on or to the Premises prior to or during the Term of this Lease (except as otherwise expressly required pursuant to **Section 5.3(e)** above), excepting only ordinary wear and tear, and damage by fire or other casualty for which, under other provisions of this Lease Tenant has no responsibility to repair or restore, or as a consequence of the exercise of the power of eminent domain. Notwithstanding the foregoing, if this Lease has been terminated on account of a Casualty, Tenant will not be obligated to perform the Tenant's Restoration Work so long as Tenant has paid the insurance proceeds to Landlord in accordance with **Section 11.2(e)** above. Tenant shall remove all of Tenant's Removable Property, all signs installed by or on behalf of Tenant in or on the Premises and the Building, all lines and other wiring and cabling installed by Tenant prior to or during the Term. Tenant shall repair any damage to the Premises or the Building caused by such removal and restore the affected area to its condition prior to the installation thereof. Any Tenant's Removable Property which shall remain in the Building or on the Premises after the expiration or termination of the Term of this Lease shall be deemed conclusively to have been abandoned, and either may be retained by Landlord as its property or may be disposed of in such manner as Landlord may see fit, at Tenant's sole cost and expense.

ARTICLE 13
RIGHTS OF MORTGAGEES; TRANSFER OF TITLE

13.1 **Rights of Mortgagees or Ground Lessor**.

(a) This Lease, and all rights of Tenant hereunder, are and shall be subject and subordinate to any ground or underlying leases of the Property and to all renewals, extensions, modifications and replacements thereof, and to all mortgages, deeds of trust or similar encumbrances which may now or hereafter affect the Property, whether or not such mortgages or other encumbrances shall also cover other lands and/or buildings, and to each and every advance made or hereafter to be made under such mortgages and other encumbrances, and to all renewals, modifications, replacements, extensions and consolidations of such mortgages and other encumbrances. This Section shall be self operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute, acknowledge and deliver any instrument that Landlord, the lessor under any such lease or the holder of any such mortgage or other encumbrance or any of their respective successors in interest may reasonably request to evidence such subordination. Any lease to which this Lease is, at the time referred to, subject and subordinate is herein called "**Superior Lease**" and the lessor of a Superior Lease or its successor in interest at the time referred to, is herein

called "**Superior Lessor**"; and any mortgage or other encumbrance to which this Lease is, at the time referred to, subject and subordinate, is herein called "**Superior Mortgage**" and the holder of a Superior Mortgage, or its successor in interest at the time referred to, is herein called "**Superior Mortgagee**." If any Superior Mortgagee, shall so elect, this Lease and the rights of Tenant hereunder, shall be superior in right to the rights of such holder, with the same force and effect as if this Lease had been executed, delivered and recorded, or a statutory notice hereof recorded, prior to the execution, delivery and recording of any such Superior Mortgage. The election of any such Superior Mortgagee shall become effective upon either notice from such Superior Mortgagee to Tenant in the same fashion as notices from Landlord to Tenant are to be given hereunder or by the recording in the appropriate registry or recorder's office of an instrument in which the Superior Mortgagee subordinates its rights under such Superior Mortgage to this Lease.

(b) If any Superior Lessor or Superior Mortgagee or the nominee or designee of any Superior Lessor or Superior Mortgagee shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, or otherwise, then at the request of such party so succeeding to Landlord's rights (herein called "**Successor Landlord**"), Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Tenant waives the provisions of any law or regulation, now or hereafter in effect, which terminates or may give or purport to give Tenant any right to terminate or otherwise affect this Lease or the obligations of Tenant hereunder in the event that any such foreclosure, termination or other proceeding is filed, prosecuted or completed. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon all of the terms, conditions and covenants as are set forth in this Lease, except that the Successor Landlord shall not be (i) liable in any way to Tenant for any act or omission, neglect or default on the part of Landlord under this Lease, (ii) responsible for any monies owing by or on deposit with Landlord to the credit of Tenant, (iii) subject to any counterclaim or setoff which theretofore accrued to Tenant against Landlord, (iv) bound by any modification of this Lease subsequent to such Superior Lease or Superior Mortgage, or by any previous prepayment of fixed rent for more than one (1) month, which was not approved in writing by the Superior Lessor or the Superior Mortgagee thereto, (v) liable to the Tenant beyond the Successor Landlord's interest in the Property and the rents, income, receipts, revenues, issues and profits issuing from such Property, (vi) responsible for the performance of any work to be done by the Landlord under this Lease to render the Premises ready for occupancy by the Tenant, (vii) liable for the payment of any improvement allowance or similar amount owing to Tenant on account of the performance of any alterations or leasehold improvements to the Premises or the Building, or (viii) required to remove any person occupying the Premises or any part thereof, except if such person claims by, through or under the Successor Landlord.

(c) Landlord shall use commercially reasonable efforts to deliver to Tenant a "Subordination, Non-Disturbance and Attornment Agreement" ("**SNDA**") in the then customary form of such Superior Mortgagee or Superior Lessor with respect to any current or future future Superior Mortgages and Superior Leases. Landlord shall in

no

event be required to expend any monies or commence or prosecute litigation or reject financing which is otherwise satisfactory to Landlord in order to deliver such an SNDA. Tenant may request customary and reasonable modifications to such SNDA from the Superior Mortgagee and Superior Lessor (as the case may be) except that Landlord's obligations under this **Section 13.1(c)** shall be deemed fully satisfied when Landlord delivers an SNDA from its Superior Mortgagee or Superior Lessor, as applicable, on its standard form regardless of the acceptability to such Superior Mortgagee or Superior Lessor of Tenant's requested modifications.

13.2 Assignment of Rents and Transfer of Title.

(a) With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to a Superior Mortgagee on property which includes the Premises, Tenant agrees that the execution thereof by Landlord, and the acceptance thereof by the Superior Mortgagee shall never be treated as an assumption by the Superior Mortgagee of any of the obligations of Landlord hereunder unless the Superior Mortgagee shall, by notice sent to Tenant, specifically otherwise elect and, except as aforesaid, the Superior Mortgagee shall be treated as having assumed Landlord's obligations hereunder only upon foreclosure of the Superior Mortgage and the taking of possession of the Premises.

(b) In no event shall the acquisition of Landlord's interest in the Property by a purchaser which, simultaneously therewith, leases Landlord's entire interest in the Property back to the seller thereof be treated as an assumption by operation of law or otherwise, of Landlord's obligations hereunder, but Tenant shall look solely to such seller-lessee, and its successors from time to time in title, for performance of Landlord's obligations hereunder. In any such event, this Lease shall be subject and subordinate to the lease to such purchaser. For all purposes, such seller-lessee, and its successors in title, shall be the Landlord hereunder unless and until Landlord's position shall have been assumed by such purchaser-lessor.

(c) Except as provided in **paragraph (b)** of this Section, in the event of any transfer of title to the Property by Landlord, Landlord shall thereafter be entirely freed and relieved from the performance and observance of all covenants and obligations hereunder arising from and after the date of such transfer, so long as any such transferee assumes in writing (or by operation of law) all of Landlord's obligations under this Lease.

13.3 Notice to Mortgagee. Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving any Superior Mortgagee and Superior Lessor (of which Tenant has been provided written notice including their notice addresses), as applicable, written notice by certified mail, return receipt requested, specifying the default in reasonable detail, and affording such Superior Mortgagee and Superior Lessor, as applicable, (i) an opportunity to perform Landlord's obligations hereunder (but not less than thirty (30) days), or (ii) time to obtain possession of the mortgaged or leased estate and then to cure such default of Landlord, if such default cannot be cured without such Superior Mortgagee or Superior Lessor

or taking possession of the mortgaged or leased estate, but not to exceed one hundred eighty (180)

days in the aggregate to obtain such possession and cure the Landlord default. The curing of any of Landlord's defaults by a Superior Mortgagee or Superior Lessor shall be treated as performance by Landlord.

ARTICLE 14 DEFAULT; REMEDIES

14.1 Tenant's Default.

(a) If at any time subsequent to the date of this Lease any one or more of the following events (herein referred to as an "**Event of Default**") shall occur:

(i) Tenant shall fail to pay the Basic Rent, Expense Charges or any other Additional Rent hereunder when due and such failure shall continue for five (5) Business Days after written notice to Tenant from Landlord (except that such written notice shall only be required twice (i.e. two separate failures) in any twelve (12) month period, with any subsequent failure to pay such sums constituting an Event of Default unless paid within five (5) Business Days after the date due without need for an additional written notice); or

(ii) Tenant shall neglect or fail to perform or observe any other covenant herein contained on Tenant's part to be performed or observed and Tenant shall fail to remedy the same within thirty (30) days after notice to Tenant (or such shorter period for completing a cure for such default as may be required by applicable Laws or by virtue of an Emergency) specifying such neglect or failure, or if such failure is of such a nature that Tenant cannot reasonably remedy the same within such thirty (30) day period, Tenant shall fail to commence promptly (and in any event within such thirty (30) day period) to remedy the same and thereafter to diligently prosecute such remedy to completion with diligence and continuity (and in any event, within ninety (90) days after the notice described in this **subparagraph (ii)**), provided that (x) in no event shall Tenant have such additional period of time that would (A) subject Landlord or any Superior Lessor or any Superior Mortgagee to prosecution for a crime or any other fine or charge, or (B) subject the Property, or any part thereof, to any lien or encumbrance which is not removed or bonded within the time period required under this Lease, and (y) such written notice shall only be required twice in any twelve (12) month period, with any of the same subsequent performance default constituting an Event of Default unless cured within the period required under this Lease without need for an additional written notice); or

(iii) Tenant's leasehold interest in the Premises shall be taken on execution or by other process of law directed against Tenant; or

(iv) If Tenant or any guarantor of this Lease shall (i) make an assignment for the benefit of creditors, (ii) acquiesce in a petition in any court in any bankruptcy, reorganization, composition, extension or insolvency

proceedings, (iii) seek, consent to or acquiesce in the appointment of any trustee,

receiver or liquidator of Tenant or of any guarantor of this Lease or of all or any part of Tenant's or such guarantor's property, (iv) file a petition seeking an order for relief under the Title 11 of the United States Code, as now or hereafter amended or supplemented (the "**Bankruptcy Code**"), or by filing any petition under any other present or future federal, state or other statute or law for the same or similar relief, or (v) fail to win the dismissal, discontinuation or vacating of any involuntary bankruptcy proceeding filed under the Bankruptcy Code, or under any other present or future federal, state or other statute or law for the same or similar relief, within ninety (90) days after such proceeding is initiated; or

(v) Any lien has been filed against the Property, or any portion thereof, as a result of work performed by or on behalf of Tenant (other than any work performed for Tenant by Landlord or its employees, agents or contractors), and Tenant fails, within 30 days after the lien is filed, either (1) to cause said lien to be removed from the Property, or (2) to furnish a bond sufficient to remove the lien or cause a title insurance endorsement to be issued with respect to such lien, which endorsement shall be satisfactory, in form and substance to Landlord, in Landlord's sole and absolute discretion; or

(vi) Tenant's interest in the Premises shall be transferred without Landlord prior written consent, if so required, in violation of **Article 6** hereof, and Tenant shall fail to remedy the same within fifteen (15) days after written notice to Tenant specifying such violation;

then in any such case Landlord may exercise any of Landlord's rights or remedies available under this Lease, at law or in equity.

14.2 Landlord's Remedies.

(a) Upon the occurrence of an Event of Default, Landlord shall have the following remedies, in addition to any and all other rights and remedies available at Law or in equity or otherwise provided in this Lease, any one or more of which Landlord may resort to cumulatively, consecutively, or in the alternative:

(i) Landlord may continue this Lease in full force and effect, and collect Rent and other charges as and when due, without prejudice to Landlord's right to subsequently elect to terminate this Lease on account of such Event of Default;

(ii) Landlord may terminate this Lease upon written notice to Tenant to such effect, in which event this Lease (and all of Tenant's rights hereunder) shall immediately terminate, but such termination shall not affect those obligations of Tenant which are intended by their terms to survive the expiration or termination of this Lease, and Tenant shall remain liable for damages as hereinafter set forth in this **Section 14.2**. This Lease may also be terminated by a judgment specifically providing for termination;

(iii) Landlord may terminate Tenant's right of possession without terminating this Lease upon written notice to Tenant to such effect, in which event Tenant's right of possession of the Premises shall immediately terminate, but this Lease shall continue subject to the effect of this **Section 14.2**;

(iv) Landlord may, but shall not be obligated to, perform any defaulted obligation of Tenant, and to recover from Tenant, as Additional Rent, the costs incurred by Landlord in performing such obligation. Notwithstanding the foregoing, or any other notice and cure period set forth herein, Landlord may exercise its rights under this **Section 14.2(a)(iv)** without prior notice or upon shorter notice than otherwise required hereunder (and as may be reasonable under the circumstances) in the event of any one or more of the following circumstances is present: (i) there exists a reasonable risk of prosecution of Landlord unless such obligation is performed sooner than the stated cure period; (ii) there exists an Emergency arising out of the defaulted obligation; or (iii) the Tenant has failed to obtain insurance required by this Lease, or such insurance has been canceled by the insurer without being timely replaced by Tenant, as required herein; and

(v) Landlord shall have the right to recover damages from Tenant, as set forth in this **Section 14.2**.

(b) Upon any termination of this Lease or of Tenant's right of possession, Landlord, at its sole election, may (i) re-enter the Premises, either by summary proceedings or other lawful proceedings and remove and dispossess Tenant and all other persons and any and all property from the same, as if this Lease had not been made, (ii) remove all property from the Premises and store the same in a public warehouse or elsewhere at Tenant's expense, and/or (iii) deem such property to be abandoned, and, in such event, Landlord may dispose of such property at Tenant's expense, free from any claim by Tenant or anyone claiming by, through or under Tenant. It shall not constitute a constructive or other termination of this Lease or Tenant's right to possession if Landlord (a) exercises its right to repair or maintain the Premises, (b) performs any unperformed obligations of Tenant, (c) stores or removes Tenant's property from the Premises after Tenant's dispossession, (d) attempts to relet, or, in fact, does relet, the Premises or (e) seeks the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease.

(c) If this Lease shall have been terminated as provided in this Article, Tenant shall pay the Basic Rent, Expense Charges, Additional Rent and other sums payable hereunder up to the time of such termination, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such termination, and whether or not the Premises shall have been relet, shall be liable to Landlord for, and shall pay to Landlord, as liquidated current damages: the Basic Rent, Expense Charges, Additional Rent and other sums that would be payable hereunder if such termination had not occurred, less the net proceeds, if any, of any reletting of the Premises, after deducting all actual expenses incurred by Landlord in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal

expenses, attorneys' fees, advertising, expenses of employees, alteration costs and expenses of

preparation for such reletting. Tenant shall pay the portion of such current damages to Landlord monthly on the days which the Basic Rent would have been payable hereunder if this Lease had not been terminated.

(d) At any time after termination of this Lease as provided in this Article, whether or not Landlord shall have collected any such current damages under (c) above, Landlord may elect to receive from Tenant, as liquidated final damages and in lieu of all such current damages with respect to the recovery of Rent, beyond the date of such demand, an amount equal to the excess, if any, of the then present value of the Basic Rent, Expense Charges, Additional Rent and other sums as hereinbefore provided which would be payable hereunder from the date of such demand assuming that, for the purposes of this paragraph, annual payments by Tenant on account of Taxes, Building Operating Expenses and Laboratory Operating Expenses would be the same as the payments required for the immediately preceding Operating or Tax Year plus a three percent (3%) annual increase per year for what would be the then unexpired Term of this Lease if the same remained in effect, over the then fair net rental value (inclusive of all such charges) of the Premises for the same period. In the computation of present value, a discount at the then market discount rate as reasonably determined by Landlord shall be employed.

(e) In case of any Event of Default, re-entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (i) relet the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be equal to or less than or exceed the period which would otherwise have constituted the balance of the Term of this Lease and may grant concessions or free rent to the extent that Landlord considers advisable and necessary to re-let the same and (ii) make such reasonable alterations, repairs and decorations in the Premises as Landlord considers advisable and necessary for the purpose of reletting the Premises; and the making of such alterations, repairs and decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Tenant, for itself and any and all persons claiming through or under Tenant, including its creditors, upon the termination of this Lease and of the term of this Lease in accordance with the terms hereof, or in the event of entry of judgment for the recovery of the possession of the Premises in any action or proceeding, or if Landlord shall enter the Premises by process of law or otherwise, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges which it or they may or might have under and by reason of any present or future law or decision, to redeem the Premises or for a continuation of this Lease for the term of this Lease hereby demised after having been dispossessed or ejected therefrom by process of law, or otherwise.

(f) In addition to any other remedies under this **Article 14**, Tenant shall immediately become liable to Landlord for all damages proximately caused by Tenant's breach of its obligations under this Lease, including all actual costs Landlord incurs in reletting (or attempting to relet) the Premises or any part thereof, including, without limitation, brokers' commissions, expenses of cleaning, altering and preparing the Premises for new tenants, legal fees and all other like expenses properly chargeable against the Premises and the rental received therefrom and like costs, provided that

nothing set forth in this **Section 14.2(f)** shall be construed to impose upon Landlord any obligation to relet the Premises or to mitigate its damages hereunder, except to the extent expressly required under applicable Law or as expressly set forth in this **Section 14.2(f)**. If Landlord does elect to relet the Premises (or any portion thereof), such reletting may be for a period shorter or longer than the remaining Term, and upon such terms and conditions as Landlord deems appropriate, in its sole and absolute discretion, and Tenant shall have no interest in any sums collected by Landlord in connection with such reletting except to the extent expressly set forth herein. If the Premises or any part thereof shall be relet in combination with any other space, then proper apportionment on a per-square foot basis shall be made of the rent received from such reletting and of the expenses of such reletting. If Landlord shall succeed in reletting the Premises during the period in which Tenant is paying monthly rent damages as described in **Section 14.2(c)**, Landlord shall credit Tenant with the net rents collected by Landlord from such reletting, after first deducting from the gross rents, as and when collected by Landlord, (A) all actual expenses incurred or paid by Landlord in collecting such rents, and (B) any theretofore unrecovered costs associated with the termination of this Lease or Landlord's reentry into the Premises, including any theretofore unrecovered expenses of reletting or other damages payable hereunder. If the Premises or any portion thereof be relet by Landlord for the unexpired portion of the Term before presentation of proof of such damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall, prima facie, constitute the fair and reasonable rental value for the Premises, or part thereof, so relet for the term of the reletting. Landlord shall not be liable in any way whatsoever for its failure or refusal to relet the Premises or, if the Premises or any part are relet, for its failure to collect the rent under such reletting, and no such refusal or failure to relet or failure to collect rent shall release or affect Tenant's liability for damages or otherwise under this Lease. The foregoing notwithstanding, in the event of termination of this Lease or repossession of the Premises after an Event of Default of Tenant, and provided Tenant has cooperated with Landlord in timely surrendering of possession of the Premises as required herein after such termination or repossession, Landlord agrees to use commercially reasonable efforts to mitigate its damages hereunder, provided, however, Landlord's obligation to use commercially reasonable efforts to mitigate its damages shall be deemed satisfied by Landlord's marketing of the Premises in a manner substantially similar to the manner in which Landlord markets other premises within the Building, and provided further, that Landlord shall not be obligated to show preference for reletting the Premises over any other vacant space in the Building, to lease any space while Landlord is assembling such space as part of a block of space for lease, or to lease the Premises for a rental less than the current fair market rent then prevailing for comparable laboratory space in Comparable Buildings.

(g) If the trustee or the debtor in possession assumes the Lease under applicable bankruptcy law, it may assume and assign its interest in this Lease only if the proposed assignee first provides Landlord with (1) notice of such proposed assignment, setting forth (i) the name and address of the proposed assignee, its proposed use of the Premises, reasonably detailed character and financial references for such person (including its most recent balance sheet and income statements certified by its chief financial officer or, if available, a certified public accountant) and any other information reasonably requested by Landlord, and (ii) all of the terms and conditions of such offer,

shall be given

to Landlord by Tenant or such trustee no later than twenty (20) days after receipt by Tenant or such trustee of such offer, but in any event no later than ten (10) days prior to the date that Tenant or such trustee shall make application to a court of competent jurisdiction for authority and approval to assume this Lease and enter into such assignment; (2) Adequate Assurance of Future Performance (as hereinafter defined) of all of Tenant's obligations under this Lease, and (3) Landlord determines, in the exercise of its reasonable business judgment, that the assignment of this Lease will not breach any other lease, or any mortgage, financing agreement, or other agreement relating to the Property by which Landlord or the Property is then bound (and Landlord shall not be required to obtain consents or waivers from any third party required under any lease, mortgage, financing agreement, or other such agreement by which Landlord is then bound). Landlord shall have the option, to be exercised by notice to Tenant or such trustee given at any time prior to the date the application is filed for court approval of the assumption and assignment of this Lease to the proposed assignee, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such proposed assignee, less any brokerage commissions which may be payable out of the consideration to be paid by such person for the assignment of this Lease.

(h) For purposes only of **paragraph (g)** above, and in addition to any other requirements under the Bankruptcy Code, any future federal bankruptcy law and applicable case law, "Adequate Assurance of Future Performance" means at least the satisfaction of the following conditions, which Landlord and Tenant acknowledge to be commercially reasonable:

(i) the proposed assignee submitting a current financial statement, audited by a certified public accountant, that allows a net worth and working capital in amounts determined in the reasonable business judgment of Landlord to be sufficient to assure the future performance by the assignee of Tenant's obligation under this Lease; and

(ii) if requested by Landlord in the exercise of its reasonable business judgment, the proposed assignee obtaining a guarantee (in form and substance satisfactory to Landlord) from one or more persons who satisfy Landlord's standards of creditworthiness; and

(iii) the proposed assignee is of a character and financial worth such as is in keeping with the standards of Landlord in those respects for the Property, the assignee's tenancy is of the same quality as other tenants at the Property, and the purposes for which the proposed assignee intends to use the Premises are uses expressly permitted by and not prohibited by this Lease or prohibited by any other lease at the Property.

14.3 **Additional Rent**. If Tenant shall fail to pay when due any sums under this Lease designated as an Operating Expense Charge or other Additional Rent, Landlord shall have the same rights and remedies as Landlord has hereunder for failure to pay Basic Rent.

14.4 **Remedying Defaults**. Landlord shall have the right, but shall not be required, to pay such sums or do any act which requires the expenditure of monies which may be necessary or appropriate by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease which failure continues beyond any applicable notice and cure periods, and in the event of the exercise of such right by Landlord, Tenant agrees to pay to Landlord forthwith upon demand all such sums, together with interest thereon at the Default Interest Rate, as Additional Rent.

14.5 **Remedies Cumulative**. The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may at any time be entitled lawfully, and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

14.6 **Litigation Costs**. In the event of litigation or other legal proceeding between Landlord and Tenant relating to the provisions of this Lease or Tenant's occupancy of the Premises, the losing party shall, upon demand, reimburse the prevailing party for its reasonable costs of prosecuting and/or defending such proceeding (including, without limitation, reasonable attorneys' fees).

14.7 **Waiver**.

(a) Failure on the part of Landlord or Tenant to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by Tenant or Landlord, respectively, of any of the other's rights hereunder. Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of Landlord or Tenant to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary Landlord's or Tenant's consent or approval to or of any subsequent similar act by the other.

(b) Any waiver by Landlord or Tenant of any provisions of this Lease must be in a writing signed by Landlord or Tenant, as applicable. In addition, Landlord's acceptance of any payment from Tenant after a termination of this Lease due to an Event of Default by Tenant shall not have the effect of reinstating this Lease, nor estop Landlord from exercising any of the rights and remedies granted to Landlord hereunder arising out of such Event of Default. No payment by Tenant or acceptance by Landlord of a lesser amount than the Basic Rent, Expense Charges, Additional Rent and other sums due hereunder shall be deemed to be other than on account of the total amount due from Tenant to Landlord, to be applied in such order as Landlord deems appropriate. In no event shall any endorsement or statement on any check or accompanying any check or payment be deemed an accord and satisfaction; and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Basic Rent, Expense Charges, Additional Rent or other sum and to pursue any other remedy provided in this Lease.

14.8 Security Deposit.

(a) Simultaneously with the execution of this Lease by Tenant, Tenant shall deliver to Landlord, and Tenant shall maintain in effect at all times during the Initial Term, as security for the full and faithful performance and observance by Tenant of Tenant's covenants and obligations under this Lease, an unconditional, irrevocable, "clean" letter of credit in the amount set forth in **Section 1.1** hereof and substantially in the form annexed hereto as **Exhibit H** or other form reasonably approved by Landlord and otherwise reasonably satisfactory to Landlord and issued by a banking corporation reasonably satisfactory to Landlord and either having its principal place of business or a duly licensed branch or agency in Boston, MA. Such letter of credit shall have an expiration date no earlier than the first anniversary of the date of issuance thereof and shall be automatically renewed from year to year unless terminated by the issuer thereof by notice to Landlord given not less than forty-five (45) days prior to the expiration thereof. Tenant shall, throughout the Initial Term of this Lease, deliver to Landlord, in the event of the termination of any such letter of credit, replacement letters of credit in lieu thereof (each such letter of credit and such extensions or replacements thereof, as the case may be, is hereinafter referred to as a "**Letter of Credit**") no later than 30 days prior to the expiration date of the preceding Letter of Credit. The term of each such Letter of Credit shall be not less than one year and shall be automatically renewable from year to year as aforesaid. Notwithstanding the foregoing, if Landlord shall elect, in its sole discretion, to accept a Letter of Credit which is subject to a final expiration date, Tenant shall deliver a replacement of or amendment to such Letter of Credit no later than thirty (30) days prior to such final expiration date, and the final Letter of Credit delivered to Landlord pursuant to this **Section 14.8** shall have a final expiration date occurring not earlier than sixty (60) days following the expiration date of this Lease. If Tenant shall fail to obtain any replacement of or amendment to a Letter of Credit within any of the applicable time limits set forth in this **Section 14.8**, Tenant shall be in default of its obligations under this **Section 14.8** and Landlord shall have the right (but not the obligation), at its option, to draw down the full amount of the existing Letter of Credit and use, apply and retain the same as security hereunder, and notwithstanding such draw by Landlord, Landlord shall have the right (but not the obligation), at its option, to give written notice to Tenant stating that such failure by Tenant to deliver such replacement of or amendment to the Letter of Credit constitutes a continuing default by Tenant of its obligations under this **Section 14.8**, and in the event that Tenant shall not have delivered such replacement or amendment to Landlord within fifteen (15) Business Days after Tenant's receipt of such notice, Landlord may give to Tenant a notice of intention to end the term of this Lease at the expiration of five (5) days from the date of the service of such notice of intention, and upon the expiration of said five (5) days unless Tenant shall have delivered such replacement of or amendment to the Letter of Credit during such five (5) day period, this Lease and the term and estate hereby granted, whether or not the Initial Term shall theretofore have commenced, shall terminate with the same effect as if that day was the day herein definitely fixed for the end and expiration of this Lease, but Tenant shall remain liable for damages as provided in this **Article 14**. Upon delivery to Landlord of any such replacement of or amendment to the Letter of Credit within the fifteen (15) Business Day period described in the preceding sentence, such default shall be deemed cured and Landlord shall return to Tenant the proceeds of the Letter of Credit which had

been drawn

by Landlord pursuant to the preceding sentence (or any balance thereof to which Tenant is entitled).

(b) In the event Tenant defaults in respect of the full and prompt payment and performance of any of the terms, provisions, covenants and conditions of this Lease beyond applicable notice (the delivery of which shall not be required for purposes of this **Section 14.8** if Landlord is prevented or prohibited from delivering the same under applicable law, including, but not limited to, all applicable bankruptcy and insolvency law) and the expiration of any applicable cure periods (except that no notice and cure period shall be required for purposes of this **Section 14.8** with respect to any default by Tenant hereunder if, at the time of such default, any of the events set forth in **Section 14.8(b)(iv)** shall have occurred with or without the acquiescence of Tenant), including, but not limited to, the payment of Basic Rent and Expense Charges, Landlord may, at its election, (but shall not be obligated to) draw down the entire Letter of Credit or any portion thereof and use, apply or retain the whole or any part of the security represented by the Letter of Credit to the extent required for the payment of: (i) Basic Rent, Expense Charges or any other sum as to which Tenant is in default, (ii) any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, provisions, covenants, and conditions of this Lease, including but not limited to, any reletting costs or expenses (including, without limitation, any free rent, tenant improvement allowance, leasing commissions, attorneys' fees, costs and expenses, and other fees, costs and expenses relating to the reletting of all or any portion of the Premises), (iii) any damages or deficiency in the reletting of the Premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord, or (iv) any damages awarded to Landlord in accordance with the terms and conditions of this **Article 14** hereof, it being understood that any use of the whole or any part of the security represented by the Letter of Credit shall not constitute a bar or defense to any of Landlord's other remedies under this Lease or any Law, including but not limited to Landlord's right to assert a claim against Tenant under 11 U.S.C. §502(b)(6) or any other provision of Title 11 of the United States Code. To insure that Landlord may utilize the security represented by the Letter of Credit in the manner, for the purpose, and to the extent provided in this **Section 14.8**, each Letter of Credit shall provide that the full amount or any portion thereof may be drawn down by Landlord upon the presentation to the issuing bank (or the advising bank, if applicable) of Landlord's draft drawn on the issuing bank without accompanying memoranda or statement of beneficiary. In no event shall the Letter of Credit require Landlord to submit evidence to the issuing (or advising) bank of the truth or accuracy of any such written statement and in no event shall the issuing bank or Tenant have the right to dispute the truth or accuracy of any such statement nor shall the issuing (or advising) bank have the right to review the applicable provisions of the Lease. In no event and under no circumstance shall the draw down on or use of any amounts under the Letter of Credit constitute a basis or defense to the exercise of any other of Landlord's rights and remedies under this Lease or under any Law, including, but not limited to, Landlord's right to assert a claim against Tenant under 11
U.S.C. §502(b)(6) or any other provision of Title 11 of the United States Code.

(c) In the event Tenant defaults in respect of any of the terms, provisions, covenants or conditions of this Lease beyond notice (the delivery of which

shall not be required for purposes of this **Section 14.8** if Landlord is prevented or prohibited from delivering the same under applicable law, including, but not limited to, all applicable bankruptcy and insolvency law) and the expiration of any applicable cure periods (except no notice and cure period shall be required for purposes of this **Section 14.8** with respect to any default by Tenant hereunder if, at the time of such default, any of the events set forth in **Section 14.8(b)(iv)** shall have occurred with or without the acquiescence of Tenant) and Landlord utilizes all or any part of the security represented by the Letter of Credit but does not terminate this Lease as provided in this **Article 14** hereof, Landlord may, in addition to exercising its rights as provided in **paragraph (b)** hereof, retain the unapplied and unused balance of the portion of the Letter of Credit drawn down by Landlord (herein called the "**Cash Security**") as security for the faithful performance and observance by Tenant thereafter of the terms, provisions, and conditions of this Lease, and may use, apply, or retain the whole or any part of said Cash Security to the extent required for payment of Basic Rent, Additional Rent or any other sum as to which Tenant is in default (beyond applicable notice and cure periods) or for any sum which Landlord may expend or be required to expend by reason of Tenant's default in respect of any of the terms, covenants, and conditions of this Lease. In the event Landlord uses, applies or retains any portion or all of the security represented by the Letter of Credit, Tenant shall forthwith restore the amount so used, applied or retained (at Landlord's option, either by the deposit with Landlord of cash or the provision of a replacement Letter of Credit) so that at all times the amount of the security represented by the Letter of Credit and the Cash Security (if any) shall be not less than the security required by **Section 1.1** hereof, failing which Tenant shall be in default of its obligations under this **Section 14.8** and Landlord shall have the same rights and remedies as for the non-payment of Basic Rent beyond the applicable grace period, unless Tenant shall have restored the Letter of Credit as set forth in this **Section 14.8(c)** within five (5) days following Landlord's written demand for such restoration.

(d) In addition to and without limitation of Landlord's other rights under this **Section 14.8**, if at any time during the Term of the Lease (as the same may be extended), Landlord reasonably determines that the financial condition of the issuer of the then current Letter of Credit is such that Landlord's ability to draw upon the Letter of Credit is, or in the future may be, impaired, restricted, refused or otherwise adversely affected, then Tenant shall, within 10 Business Days of Landlord's written request to Tenant, then Landlord may immediately draw upon the Letter of Credit as provided in **Section 14.8** and use, apply and retain the same as Cash Security hereunder and Landlord shall have the right, by giving Tenant written notice of such requirement, to require that Tenant obtain from a new issuer a replacement Letter of Credit, which issuer and replacement Letter of Credit shall both comply in all respects with the requirements of this **Section 14.8**. In the event that Tenant shall not have delivered to Landlord a replacement Letter of Credit complying with all of the requirements of this **Section 14.8** within ten (10) days after Tenant's receipt of such notice, Landlord shall have the right (but not the obligation), at its option, to give written notice to Tenant stating that such failure constitutes a continuing and immediate Default of Tenant under this Lease without any additional notice or cure period applicable thereto, and Landlord shall have the right to exercise all rights and remedies available to Landlord under this Lease or at Law and in

equity with respect to such Default of Tenant.

(e) If Tenant shall fully and faithfully comply with all of Tenant's covenants and obligations under this Lease, the Letter of Credit and the Cash Security (if any) shall be returned to Tenant within sixty (60) days after the date fixed as the end of this Lease and after delivery to Landlord of entire possession of the Premises; provided, however, that in no event shall any such return be construed as an admission by Landlord that Tenant has performed all of its obligations hereunder. In the event of any sale, transfer or leasing of Landlord's interest in the Building whether or not in connection with a sale, transfer or leasing of the Land to a vendee, transferee or lessee, Landlord shall have the right to transfer the Letter of Credit and the Cash Security (if any) to the vendee, transferee or lessee or, in the alternative, to require Tenant to deliver a replacement Letter of Credit or appropriate amendment to the Letter of Credit naming the new landlord as beneficiary, and, upon delivery by Tenant of a replacement Letter of Credit, if applicable, Landlord shall return the existing Letter of Credit to Tenant. Upon such transfer or return of the Letter of Credit and the Cash Security (if any), Landlord shall thereupon be released by Tenant from all liability for the return thereof, and Tenant shall look solely to the new landlord for the return of the same. The provisions of the preceding sentence shall apply to every subsequent sale, transfer or leasing of the Building, and any successor of Landlord may, upon a sale, transfer, leasing or other cessation of the interest of such successors in the Building, whether in whole or in part, transfer the Letter of Credit and the Cash Security (if any) to any vendee, transferee or lessee of the Building (or require Tenant to deliver a replacement Letter of Credit as hereinabove set forth) and shall thereupon be relieved of all liability with respect thereto. If Tenant shall fail to timely deliver a replacement Letter of Credit, as required by Landlord, Tenant shall be in default of its obligations under this **Section 14.8** and Landlord shall have the right (but not the obligation), at its option, to draw down the existing Letter of Credit and retain the proceeds as Cash Security hereunder until a replacement Letter of Credit is delivered, and notwithstanding such draw by Landlord, Landlord shall have the right (but not the obligation), at its option, to give written notice to Tenant stating that such failure by Tenant to deliver such replacement Letter of Credit constitutes a continuing default by Tenant of its obligations under this **Section 14.8**, and in the event that Tenant shall not have delivered such replacement to Landlord within fifteen (15) Business Days after Tenant's receipt of such notice, Landlord may give to Tenant a notice of intention to end the term of this Lease at the expiration of five (5) days from the date of the service of such notice of intention, and upon the expiration of said five (5) days this Lease and the term and estate hereby granted shall terminate in accordance with the provisions of **paragraph**
(a) of this **Section 14.8**. Upon delivery to Landlord of any such replacement Letter of Credit within the fifteen (15) Business Day period described in the preceding sentence, such default shall be deemed cured and Landlord shall return to Tenant the proceeds of the Letter of Credit which had been drawn by Landlord pursuant to the preceding sentence (or any balance thereof to which Tenant is entitled). Landlord and Tenant hereby agree that, in connection with the transfer by Landlord or its successors or assigns hereunder of Landlord's interest in the Letter of Credit, Tenant shall be solely liable to pay any transfer commission and other costs charged by the issuing bank in connection with any such transfer of the Letter of Credit, as Expense Charges hereunder, upon Landlord's demand therefor. Except in connection with a permitted assignment of this Lease, Tenant shall not assign or encumber or attempt to assign or encumber the security represented by the Letter

of Credit, and neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. In any event, in the absence of evidence satisfactory to Landlord of an assignment of the right to receive the security represented by the Letter of Credit, Landlord may return the Letter of Credit to the original Tenant regardless of one or more assignments of this Lease.

(f) Neither the Letter of Credit, any proceeds therefrom or the Cash Security, if any, shall be deemed an advance rent deposit or an advance payment of any other kind, or a measure or limitation of Landlord's damages or constitute a bar or defense to any of the Landlord's other remedies under this Lease or at law or in equity upon Tenant's default.

(g) As a material inducement to Landlord to enter into this Lease, Tenant hereby acknowledges and agrees that the Letter of Credit and the proceeds thereof (including, without limitation any Cash Security created by the draw down of all or any portion of the Letter of Credit) and the obligation to make available or pay to Landlord all or a portion thereof in satisfaction of any obligation of Tenant under this Lease, shall be deemed third-party obligations and not the obligation of Tenant hereunder and, accordingly, (A) shall not be subject to any limitation on damages contained in Section 502(b)(6) of Title 11 of the United States Code or any other limitation on damages that may apply under any federal, state or local law, rule or regulation in connection with a bankruptcy, insolvency or other similar proceeding by, against or on behalf of Tenant, (B) shall not diminish or be offset against any amounts that Landlord would be able to claim against Tenant pursuant to 11 U.S.C. §502(b)(6) as if no Letter of Credit existed, and (C) may be relied on by Landlord in the event of an assignment of this Lease that is not expressly permitted in accordance with the terms of this Lease even if such assignment has been authorized and approved by a court exercising jurisdiction in connection with a bankruptcy, insolvency or other similar proceeding by, against or on behalf of Tenant.

14.9 Landlord's Default.

(a) Subject to the provisions of **Section 14.6(b)** below, Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is commercially reasonably required to correct any such default, after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. Except as otherwise expressly set forth in this Lease, Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against the Landlord from rent thereafter due and payable, but shall look solely to the Landlord for satisfaction of such claim.

(b) If Landlord fails to provide any services, perform any repairs or maintenance, or perform any other obligation expressly required of Landlord under the terms of this Lease (excluding any services, repairs or obligations which Landlord is unable, despite the exercise of reasonable and diligent efforts, to perform due to Force Majeure and Tenant would be similarly affected thereby), which failure materially,

adversely affects Tenant’s ability to occupy or operate its business in any portion of the

Premises, and Landlord fails to commence to take corrective action within ten (10) days after written notice from Tenant (or within three (3) Business Days in the event Tenant is unable to conduct business in any portion of the Premises as a result of such failure), or if Landlord timely commences such corrective action but thereafter fails to diligently complete such action, then Tenant, without limiting any other remedies of Tenant, may, after five (5) additional Business Days' prior written notice given to Landlord, any Mortgagees of Landlord of which Tenant has written notice of, which notice indicates in bold, capitalized text that "**IF LANDLORD FAILS TO COMMENCE PERFORMANCE WITHIN 5 BUSINESS DAYS' AFTER RECEIPT, TENANT MAY PROCEED TO EXERCISE TENANT'S SELF HELP RIGHTS UNDER SECTION 14.9(b) OF THE LEASE,**" and if Landlord fails to commence such curative action within such five (5) Business Day period and thereafter diligently pursue such curative action to completion, then Tenant may make such reasonable repairs or perform such services. Landlord shall reimburse Tenant for all out-of-pocket costs reasonably incurred in connection with such repairs or services completed by Tenant hereunder, together with interest thereon at a rate equal to the lesser of (i) a rate equal to 2% plus the prime rate published from time to time in The Wall Street Journal or its successor publication and (ii) the highest rate permitted to be charged by applicable Law, within fifteen (15) days after submission by Tenant to Landlord of a statement of such costs together with invoices and other reasonable supporting documentation . If Landlord fails to pay such sum to Tenant within thirty (30) days after receipt of invoices and documentation of such expenditures from Tenant, then Tenant may, after five (5) additional Business Days' prior written notice (an "**Offset Notice**") given to Landlord which notice indicates in bold, capitalized text that "**THIS IS A TIME SENSITIVE OFFSET NOTICE AND LANDLORD SHALL BE DEEMED TO ACCEPT SUCH OFFSET IF IT FAILS TO RESPOND TO THIS SECOND REQUEST FOR DISBURSEMENT WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT,**" and, if Landlord fails within five (5) Business Days after receipt of such Offset Notice, to either (i) send Tenant written notice which disputes in good faith that the specified payment (or portion thereof) is due from Landlord (a "**Landlord's Dispute Notice**") and setting forth with reasonable particularity Landlord's reasons for its claim that Landlord was not in default of its obligations and/or such action did not have to be taken by Tenant pursuant to the terms of the Lease and/or that the charges are unnecessary or excessive (in which case Landlord shall pay the amount it contends would not have been unnecessary or excessive), or (ii) disburse the amount of the payment referenced in the Offset Notice, then Tenant shall have the right to have such unpaid amount, together with interest thereon at the Interest Rate, credited against the next installment(s) of Rent thereafter due under this Lease, up to a maximum monthly offset of twenty-five percent (25%) of the amount of each such payment of monthly Rent. Tenant's self-help rights under this **Section 14.9(b)** may be exercised only with respect to conditions actually existing within the Premises and, provided and only so long as essential services (including access) to other tenants in the Building are not interrupted or adversely affected, the Building Systems serving the Premises (and in any event not adversely affecting the Building Structure). In the event Landlord delivers a Landlord's Dispute Notice to Tenant, Tenant may, but shall not be obligated to, elect to submit Landlord's Dispute Notice to arbitration in Boston, Massachusetts for expedited proceedings under the Expedited Procedures of the

Commercial Arbitration Rules of the AAA (or its successor). In any case where Tenant elects to utilize such expedited arbitration: (a) the parties will have no right to object if the arbitrator so appointed was on the list submitted by the AAA and was not objected to in accordance with Expedited Procedure E-4 (except that any objection shall be made within four (4) Business Days from the receipt of notice of appointment), (b) the Notice of Hearing shall be given four (4) Business Days in advance of the hearing, (c) the first hearing shall be held within five (5) Business Days after the appointment of the arbitrator, and (d) the losing party in such arbitration shall pay the costs of such arbitration costs charged by the AAA and/or the arbitrator. Judgment upon any award rendered in any arbitration held pursuant to this **Section 14.9(b)** may be entered in any court having jurisdiction, and in connection therewith, the arbitrator shall be bound by the provisions of this Lease, and shall not add to, subtract from or otherwise modify such provisions.

14.10 Independent Covenants. Tenant hereby acknowledges and agrees that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, that the obligations of Tenant hereunder, including, without limitation the obligation to pay Basic Rent, Expense Charges, Additional Rent and other sums due hereunder, shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated or abated pursuant to an express provision of this Lease. Such waiver and acknowledgements by Tenant are a material inducement to Landlord entering into this Lease. To the extent of any conflicts or inconsistencies between the terms and provisions of this **Section 14.10** and the terms and provisions of the remainder of this Lease, the terms and provisions of this **Section 14.10** shall control.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 Landlord's Rights of Access. Upon the terms and conditions of this **Section 15.1**, Landlord and its agents, representatives, contractors and employees shall have the right to enter the Premises upon no less than 48 hours prior notice (except in an emergency, in which event Landlord shall endeavor to give such notice as is reasonably practicable under the circumstances and in all events notice under this **Article 15** may be by telephone to the Tenant contact on file with Building management notwithstanding anything to the contrary in this Lease provided written notice is promptly thereafter also provided) for the purpose of doing maintenance, making such repairs, alterations or improvements as Landlord shall have the right to make by the provisions of this Lease or otherwise in exercising Landlord's rights or fulfilling Landlord's obligations under this Lease. Landlord and its agents, representatives, contractors and employees shall have the right to enter the Premises without notice to Tenant for the purpose of performing janitorial and other services which Landlord is obligated to provide under this Lease or for exercising any of Landlord's rights under **Article 14** of this Lease. Landlord and its invitees shall also have the right on no less than 48 hours prior notice to enter the Premises, for the purpose of inspecting them or exhibiting them to prospective purchasers, prospective or actual Superior Lessors or Superior Mortgagees of the Building and, during the final twelve (12) months of the Term, to prospective tenants. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant to Landlord. In an emergency,

Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decorations except as otherwise expressly agreed to be performed by Landlord in this Lease. In exercising its rights under this **Section 15.1**, Landlord shall make a commercially reasonable effort not to unreasonably interfere with Tenant's business operations at the Premises.

Notwithstanding the foregoing, and so long as Tenant makes such representative available at the scheduled time, Tenant shall have the right (except in the case of an emergency) to have a representative of Tenant accompany Landlord and its agents, representatives, contractors and employees in exercising its right of access to the Premises; provided, however, Landlord shall not be responsible for any obligations under this Lease or applicable Laws to the extent Landlord is not permitted reasonable and timely access by Tenant to the necessary areas of the Premises.

15.2 **Covenant of Quiet Enjoyment**. Subject to the terms and conditions of this Lease, on payment of the Basic Rent and Expense Charges and other Additional Rent and observing, keeping and performing all of the other terms and conditions of this Lease on Tenant's part to be observed, kept and performed, Tenant shall lawfully, peaceably and quietly enjoy the Premises during the term hereof, without hindrance or ejection by any persons lawfully claiming by, through or under Landlord to have title to the Premises superior to Tenant. The foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

15.3 **Landlord's Liability**.

(a) Tenant agrees to look solely to Landlord's then equity interest in the Property at the time of recovery for recovery of any judgment against Landlord, and agrees that neither Landlord nor any successor of Landlord nor any beneficiary, trustee, member, manager, partner, director, officer, employee or shareholder of Landlord or such successor shall ever be personally liable for any such judgment, or for the payment of any monetary obligation to Tenant. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or any successor of Landlord, or to take any action not involving the personal liability of Landlord or any successor of Landlord to respond in monetary damages from Landlord's assets other than Landlord's equity interest in the Property. In furtherance of the foregoing, if Landlord fails to perform any provision of this Lease which is Landlord's obligation to perform, and as a consequence of such failure, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only (i) out of the proceeds of sale received upon levy against the right, title and interest of Landlord in the Building, or (ii) to the extent not encumbered by a secured creditor, out of the rents or other incomes receivable by Landlord from the property of which the Premises are a part.

(b) Except for Tenant's liability for damages under **Section 5.5(c)** and **Section 12.1** of this Lease, in no event shall either Landlord or Tenant ever be liable to the

other for any loss of business or any other indirect or consequential damages suffered by

that party from whatever cause. Landlord shall look solely to the assets of Tenant to enforce Tenant's obligations hereunder and in no event shall any of Tenant's partners, former partners, shareholders, directors, officers, principals, clients, employees or agents, directly and indirectly, disclosed or undisclosed, of Tenant ever be personally liable for any judgment against Tenant or for any other liability or obligation of Tenant under this Lease owed to Landlord or any successor of Landlord. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Landlord might otherwise have to obtain injunctive relief (or to take any other action against Tenant or any Tenant Parties or their respective successors in interest not involving the personal liability of Tenant or any Tenant Parties and which is not otherwise inconsistent with the recourse limitations set forth in the prior sentence).

(c) Where provision is made in this Lease for Landlord's consent, and Tenant shall request such consent, and Landlord shall fail or refuse to give such consent, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent, it being intended that Tenant's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases where Landlord has expressly agreed in writing not to unreasonably withhold its consent. Furthermore, whenever Tenant requests Landlord's consent or approval (whether or not provided for herein), Tenant shall pay to Landlord, on demand, as Additional Rent, any reasonable expenses incurred by Landlord (including without limitation reasonable attorneys' fees and costs, if any) in connection therewith.

(d) Any repairs or restoration required or permitted to be made by Landlord under this Lease may be made during normal business hours, and Landlord shall have no liability for damages to Tenant for inconvenience, annoyance or interruption of business arising therefrom.

15.4 **Estoppel Certificate**. Landlord and Tenant shall, at any time and from time to time, upon not less than ten (10) Business Days' prior written request from the other, execute, acknowledge and deliver to the requesting party an estoppel certificate, containing a certification as to: (i) whether the Term has commenced, setting forth the Commencement Date and the expiration date; (ii) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modification(s)); (iii) the dates to which the Basic Rent, Additional Rent and all other amounts to be paid by Tenant hereunder have been paid in advance, if at all; (iv) whether to the actual knowledge of the signer there are any uncured defaults, and, if defaults are claimed, stating the facts giving rise thereto; and (v) such other factual statements as may be reasonably requested by either party.

15.5 **Brokerage**. Tenant warrants and represents that Tenant has dealt with no broker in connection with the consummation of this Lease other than the Brokers specified in **Section 1.1**, and, in the event of any brokerage claims against Landlord predicated upon prior dealings with Tenant, Tenant agrees to defend the same and indemnify Landlord against any such claim (except any claim by Brokers). Landlord warrants and represents that Landlord has dealt with no broker in connection with the consummation of this Lease other than Brokers, and, in the event of any brokerage claims against Tenant predicated upon prior dealings with Landlord, Landlord

agrees to defend the same and indemnify Tenant against any such claim. Landlord shall be responsible to pay the commission or fee due to Brokers as and to the extent provided in a separate written agreement.

15.6 Rules and Regulations. Tenant, its employees, representatives, agents, subtenants, licensees, contractors, and invitees shall abide by the Rules and Regulations from time to time established by Landlord and the Boston Landing Rules and Regulations (as defined in the Declaration), it being agreed that (i) Landlord shall have the right from time to time during the Term to make reasonable changes in and additions to the Rules and Regulations as Landlord deems necessary for the management, safety, care, cleanliness, conservation and sustainability of the Building and the Property and for the preservation of good order therein and (ii) BLOC (as defined in the Declaration shall have the right from time to time during the Term to make reasonable changes in and additions to the Boston Landing Rules and Regulations as BLOC deems necessary for the management, safety, care, cleanliness, conservation and sustainability of the Boston Landing Project and for the preservation of good order therein. The Rules and Regulations shall be generally applicable to all tenants of the Building of similar nature to the Tenant named herein. Landlord agrees that any such Rules and Regulations will be uniformly enforced, provided, however, Landlord may waive any one or more of the Rules and Regulations for the benefit of any particular tenant if Landlord reasonably deems such waiver appropriate, but no such waiver shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from enforcing such Rules and Regulations against any or all tenants of the Building. Landlord shall not have any obligation to enforce the Rules and Regulations or the terms of any other lease against any other Tenant and Landlord shall not be liable to Tenant for violation thereof by any other tenant, its employees, representatives, agents, contractors, visitors, subtenants, licensees or invitees. In the event that there shall be a conflict between such Rules and Regulations and the provisions of this Lease, the provisions of this Lease shall control. The Rules and Regulations currently in effect are set forth in **Exhibit G** attached hereto and made a part hereof.

15.7 Financial Statements. Tenant shall deliver to Landlord, within ten (10) Business Days after Landlord's reasonable request for the same, Tenant's most recently completed financial statements (audited if available) prepared and certified by an independent certified public accountant or certified by an officer of Tenant as being true and correct in all material respects. Landlord and its affiliates and investors shall keep such financial statements confidential, provided that Landlord shall be permitted to deliver such financial statements to a lender, purchaser or lessor or a prospective lender, purchaser or lessor in connection with (i) a sale or financing of the Building or the Property or any interest in any deed of trust encumbering the Building or the Property, or (ii) a sale of all or substantially all of the interests in Landlord or (iii) any other recapitalization of the equity interests in Landlord, so long as Landlord first advises the recipient of the confidential nature of such statements. Notwithstanding the foregoing, if and only so long as Tenant's stock is publicly traded on a national exchange (or publicly listed in an equivalent manner, such as on NASDAQ) that requires its financial statements to be publicly disclosed, Tenant shall have no obligation to deliver any financial statements to Landlord. Any such financial statements may be relied upon by any actual or potential lessor, purchaser, or mortgagee of the Property.

15.8 Substitute Space. Intentionally omitted.

15.9 Confidentiality.

(a) Tenant agrees that this Lease and the terms contained herein will be treated as strictly confidential and except as required by Law (or except with the written consent of Landlord) Tenant shall not disclose the same to any third party except for Tenant's partners, lenders, accountants, auditors, brokers and attorneys who have been advised of the confidentiality provisions contained herein and agree to be bound by the same. In the event Tenant is required by Law to provide this Lease or disclose any of its terms, Tenant shall give Landlord prompt written notice of such requirement prior to making disclosure so that Landlord may seek an appropriate protective order. If failing the entry of a protective order Tenant is compelled to make disclosure, Tenant shall only disclose portions of the Lease which Tenant is required to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the information so disclosed.

(b) Landlord will not, and will use reasonable efforts to cause Landlord's agents not to, reveal to any person, association or company, any confidential information provided to Landlord by Tenant concerning the business or finances of Tenant. For purposes of this **Section 15.9(b)**, confidential information shall not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by Landlord or any Landlord agent, or (ii) was available to Landlord on a non-confidential basis prior to its disclosure to Landlord by Tenant or its representatives). Notwithstanding the foregoing, Landlord may disclose such financial information as may be provided by Tenant to Landlord to actual or prospective lenders or purchasers of the Property and/or actual or prospective investors in Landlord or any of its affiliates and to Landlord's consultants, attorneys, insurers, auditors and accountants, so long as any person or entity to whom Landlord discloses such information agrees to keep such information confidential and may disclose any information to the extent required by any Law or order of any public authority or court.

15.10 Invalidity of Particular Provisions; Saving Clause. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

15.11 Provisions Binding, Etc.. Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant (except in the case of Tenant, only such successors and assigns as may be permitted hereunder) and, if Tenant shall be an individual, upon and to his heirs, executors, administrators, successors and permitted assigns. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition. Any reference in this Lease to successors and assigns of Tenant shall not be construed to constitute a consent to assignment by Tenant.

15.12 Recording. Tenant agrees not to record this Lease, but, if the Term of this Lease (including any extended term) is seven (7) years or longer, each party hereto agrees, on the request of the other, to execute a notice of lease in recordable form and complying with applicable Law and shall contain no information other than what is statutorily required to record

a notice of lease. In no event shall such document set forth the rent or other charges payable by Tenant under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease. At any time following Landlord's request, Tenant shall execute and deliver to Landlord within ten (10) days after such request a release of any document recorded in the real property records for the location of the Property evidencing this Lease or notice of termination of this Lease in recordable form, which shall be held in escrow by Landlord until the expiration or earlier termination of the Term. The obligations of Tenant under this Section shall survive the expiration or any earlier termination of the Term.

15.13 Notice. Whenever, by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant (excluding notices pursuant to **Section 15.1** which may be oral or by email), such notice shall be in writing and shall be sent by hand, registered or certified mail, or overnight or other commercial courier, postage or delivery charges, as the case may be, prepaid as follows:

If intended for Landlord, addressed to Landlord at the address set forth in **Article 1** of this Lease (or to such other address or addresses as may from time to time hereafter be designated by Landlord by like notice).

If intended for Tenant, addressed to Tenant at the address set forth in Article I of this Lease except that from and after the Commencement Date the address of Tenant shall be the Premises (or to such other address or addresses as may from time to time hereafter be designated by Tenant by like notice).

Except as otherwise provided herein, all such notices shall be effective when received; provided, that (i) if receipt is refused, notice shall be effective upon the first occasion that such receipt is refused, (ii) if the notice is unable to be delivered due to a change of address of which no notice was given, notice shall be effective upon the date such delivery was attempted, (iii) if the notice address is a post office box number, notice shall be effective the day after such notice is sent as provided hereinabove or (iv) if the notice is to a foreign address, notice shall be effective two (2) days after such notice is sent as provided hereinabove.

Any notice given by an attorney on behalf of Landlord or by Landlord's managing agent shall be considered as given by Landlord and shall be fully effective. Any notice given by an attorney on behalf of Tenant shall be considered as given by Tenant and shall be fully effective.

15.14 Authority.

(a) Tenant hereby represents and warrants to Landlord that (i) Tenant is duly organized and validly existing in good standing under the laws of the State of Delaware and authorized to conduct business in the Commonwealth of Massachusetts, and possesses all licenses and authorizations necessary to carry on its business, (ii) Tenant has full power and authority to carry on its business, enter into this Lease and consummate the transaction contemplated by this Lease, (iii) the individual executing and delivering this Lease on Tenant's behalf has been duly authorized to do so, (iv) this Lease has been duly executed and delivered by Tenant, (v) this Lease constitutes a valid, legal,

binding and

enforceable obligation of Tenant (subject to bankruptcy, insolvency or creditor rights laws generally, and principles of equity generally), (vi) the execution, delivery and performance of this Lease by Tenant will not cause or constitute a default under, or conflict with, the organizational documents of Tenant or any agreement to which Tenant is a party, (vii) the execution, delivery and performance of this Lease by Tenant will not violate any applicable Law, and (viii) all consents, approvals, authorizations, orders or filings of or with any court or governmental agency or body, if any, required on the part of Tenant for the execution, delivery and performance of this Lease have been obtained or made.

(b) Landlord hereby represents and warrants to Tenant that (i) Landlord is duly organized under the laws of Massachusetts and validly existing and in good standing under the laws of, the Commonwealth of Massachusetts, and possesses all licenses and authorizations necessary to carry on its business, (ii) Landlord has full power and authority to carry on its business, enter into this Lease and consummate the transaction contemplated by this Lease, (iii) the individual executing and delivering this Lease on Landlord's behalf has been duly authorized to do so, (iv) this Lease has been duly executed and delivered by Landlord, (v) this Lease constitutes a valid, legal, binding and enforceable obligation of Landlord (subject to bankruptcy, insolvency or creditor rights laws generally, and principles of equity generally), (vi) the execution, delivery and performance of this Lease by Landlord will not cause or constitute a default under, or conflict with, the organizational documents of Landlord or any agreement to which Landlord is a party, (vii) the execution, delivery and performance of this Lease by Landlord will not violate any applicable Law, and (viii) all consents, approvals, authorizations, orders or filings of or with any court or governmental agency or body, if any, required on the part of Landlord for the execution, delivery and performance of this Lease have been obtained or made.

15.15 When Lease Becomes Binding; Entire Agreement; Modification. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant. This Lease is the entire agreement between Landlord and Tenant, and this Lease expressly supersedes any negotiations, considerations, representations and understandings and proposals or other written documents relating hereto. This Lease may be modified or altered only by written agreement between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change or modify any of the provisions hereof.

15.16 Paragraph Headings and Interpretation of Sections. The paragraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease. The provisions of this Lease shall be construed as a whole, according to their common meaning (except where a precise legal interpretation is clearly evidenced), and not for or against either party. Use in this Lease of the words "including," "such as" or words of similar import, when followed by any general term, statement or matter, shall not be construed to limit such term, statement or matter to the specified item(s), whether or not language of non-limitation, such as "without limitation" or "including,

but not limited to," or words of similar import, are used with reference thereto, but rather shall be

deemed to refer to all other terms or matters that could fall within a reasonably broad scope of such term, statement or matter.

15.17 Joint and Several Liability; Successors and Assigns. If there shall be more than one person or entity which constitute the "Tenant" or "Landlord" hereunder, the obligations of Tenant of Landlord, as applicable, hereunder shall be joint and several for all such persons and entities. The covenants and conditions herein contained, subject to the provisions as to assignment, shall inure to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

15.18 Waiver of Jury Trial. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE WHERE THE BUILDING IS LOCATED, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY THE LAW OF THE STATE WHERE THE BUILDING IS LOCATED, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF BASE RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

15.19 Reservation. Except as otherwise expressly set forth in this Lease, nothing set forth in this Lease shall be deemed or construed to restrict Landlord from making any repairs, renovations, replacements, improvements and modifications to, or to reconfigure, any of the parking areas, Base Building Systems, Laboratory Systems or Common Facilities serving the Property, and Landlord expressly reserves the right to make any such repairs, renovations, replacements, improvements and modifications or reconfigurations to such areas and other facilities of the Building, Base Building Systems, Laboratory Systems, and Common Facilities as Landlord may deem appropriate, provided, however, Landlord shall not eliminate or materially reduce any Base Building Systems, Laboratory Systems or Common Facilities, including the addition or deletion of temporary or permanent improvements therein, or the conversion of areas now dedicated for the non- exclusive common use of tenants (including Tenant) to the exclusive use of one or more tenants or licensees within the Building. In connection with the foregoing, Landlord may temporarily close or cover entrances, doors, windows, corridors, or other facilities without liability to Tenant; however, in doing so, Landlord shall use commercially reasonable efforts to not unreasonably interfere with or disturb Tenant's use and occupancy of the Premises. Notwithstanding anything in this Lease to the contrary, Landlord shall not during the Term reduce access to, reconfigure, or otherwise modify the Common Facilities in a manner that unreasonably interferes with Tenant's use and enjoyment of, and access to, the Premises.

15.20 **Prohibited Persons and Transactions**. Tenant represents and warrants that neither Tenant nor any of its affiliates, nor any of their respective partners, members, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not Transfer this Lease to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

15.21 **Time Is of the Essence**. Time is of the essence of each provision of this Lease.

15.22 **Multiple Counterparts; Entire Agreement**. This Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. This Lease constitutes the entire agreement between the parties hereto, Landlord's managing agent and their respective affiliates with respect to the subject matter hereof and thereof and supersedes all prior dealings between them with respect to such subject matter, and there are no verbal or collateral understandings, agreements, representations or warranties not expressly set forth in this Lease. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant, unless reduced to writing and signed by the party or parties to be charged therewith.

15.23 **Governing Law**. This Lease shall be governed by the laws of the state in which the Property is located, without regard to application of any conflict of law principles.

15.24 **Lease Contingencies**. Notwithstanding any terms and conditions of this Lease to the contrary, this Lease shall be contingent upon (i) Landlord and the existing tenant of the Premises (the "**Existing Tenant**") executing a termination agreement of the existing lease for the Premises (the "**Existing Tenant Termination Agreement**") on terms and conditions mutually agreeable to Landlord with all contingencies thereto satisfied (the "**Lease Termination Condition**"); and (ii) the written approval of this Lease by Landlord's lender (the "**Lender Approval Condition**"). If, on or before the date that is thirty (30) days from the Effective Date, the Lender Approval Condition has not been satisfied, then Landlord shall have the right to cancel this Lease on fifteen (15) days' written notice to Tenant (the "**Landlord Cancellation Notice**"), and on the date which is fifteen (15) days after the giving of such Landlord Cancellation Notice, this Lease shall be deemed cancelled and of no further force or effect and neither party shall have any liability or obligation to the other in respect thereof. Notwithstanding the foregoing, if prior to the effective date of such termination by Landlord, the Lease Termination Condition and the Lender Approval Condition have been satisfied, then the Landlord Cancellation Notice shall be deemed null and void and this Lease shall continue in full force and effect.

ARTICLE 16 EXTENSION OF TERM

16.1 **Options to Extend**. Provided that, both at the time of exercise or at the commencement of the Extended Term (as hereinafter defined), (i) this Lease is in full force and effect, and (ii) no Event of Default shall have occurred and be continuing (either at the time of exercise or at the commencement of the Extended Term), and (iii) Original Tenant is in occupancy of not less than 75% of the Premises and Original Tenant shall not have assigned this Lease or sublet more than 25% of the Premises (other than a transfer permitted without Landlord's consent pursuant to **Section 6.1(b)**) (any of which conditions described in clauses (i), (ii), and (iii) may be waived by Landlord at any time in Landlord's sole discretion), Tenant shall have the option to extend the Term of this Lease for up to one (1) extended term (the "**Extended Term**") of seven (7) years by giving written notice to Landlord (an "**Extension Notice**") not later than twelve (12) months prior to the expiration date of the Term. The effective giving of such notice of extension by Tenant shall automatically extend the Term of this Lease for the Extended Term, and no instrument of renewal or extension need be executed. In the event that Tenant fails timely to give such notice to Landlord, this Lease shall automatically terminate at the end of the Term, and Tenant shall have no further option to extend the Term of this Lease. The Extended Term shall commence on the day immediately succeeding the expiration date of the original Term, and shall end on the day immediately preceding the seventh (7th) anniversary of such Extended Term. The Extended Term shall be on all the terms and conditions of this Lease, except: (x) Tenant shall have no further option to extend the Term, (y) the Basic Rent for the Extended Term shall be one-hundred percent (100%) of the Fair Market Rental Value of the Premises as of the commencement of the Extended Term, taking into account all then relevant factors and determined pursuant to **Section 16.2** below, and (z) Landlord shall not be required to furnish any materials or perform any work to prepare the Premises for Tenant's occupancy during the Extended Term and Landlord shall not be required to provide or pay any work allowance or reimburse Tenant for any alterations made or to be made by Tenant, or to grant Tenant any rent concession with respect to the Extended Term. The termination of this Lease during the initial Term shall terminate and render void any option or right on Tenant's part to extend this Lease for any Extended Term, and nothing contained in this **Section 16.1** shall prevent Landlord from exercising any right granted to or reserved by Landlord in this Lease to terminate this Lease. Tenant's right under this **Article 16** shall be personal to the Original Tenant under this Lease and shall not apply in favor of or be exercisable by any assignee of this Lease (other than a permitted transferee pursuant to **Section 6.1(b)** of this Lease), nor any sublessee of all or any portion of the Premises.

16.2 **Determination of Fair Market Rental Value**. Provided Tenant has timely delivered an Extension Notice hereunder to extend the Term of this Lease pursuant to **Section 16.1** above and the conditions for Tenant's exercise have been satisfied, Landlord shall provide Tenant, at least nine (9) months prior to the then expiration of the Term of this Lease, with Landlord's good faith estimate of the Fair Market Rental Value of the Premises for the Extended Term. If Tenant disagrees with Landlord's estimate of the Fair Market Rental Value as set forth in Landlord's notice referred to above, Tenant shall notify Landlord within ten (10) Business Days after its receipt of Landlord's notice setting forth Tenant's estimate of the Fair Market

Rental Value of the Premises and the parties agree to act in good faith to attempt to reach agreement on the Fair Market Rental Value of the Premises for the Extended Term. If Tenant

fails to notify Landlord that Tenant disagrees with Landlord's estimate and setting forth Tenant's Fair Market Rental Value estimate within such ten (10) Business Day period then Tenant will be deemed to have accepted Landlord's estimate of the Fair Market Rental Value for the Premises during the Extended Term. If Tenant has timely given its dispute notice and the parties are unable to reach agreement thereon within thirty (30) days after the delivery of such notice by Tenant, then either party may submit the determination of the Fair Market Rental Value of the Premises to arbitration by giving notice to the other party naming the initiating party's arbitrator within ten (10) Business Days after the expiration of such thirty (30) day period. Within fifteen
(15) days after receiving a notice of initiation of arbitration, the responding party shall appoint its own arbitrator by notifying the initiating party of the responding party's arbitrator. If the second arbitrator shall not have been so appointed within such fifteen (15) day period, the initiating party shall deliver written notice of such failure to the responding party and the responding party shall have a period of ten (10) days after receipt of such notice to appoint its arbitrator and deliver written notice thereof to the initiating party. If the responding party fails to notify the initiating party of its designated arbitrator within the foregoing additional ten (10) day period, then the second arbitrator shall be chosen in the same manner as described below with respect to the selection of the third arbitrator. Upon the selection (or appointment, as the case may be) of the second arbitrator, the two arbitrators thus appointed shall, within fifteen (15) days after the responding party's notice of appointment of the second arbitrator, appoint a third arbitrator. If the two initial arbitrators are unable timely to agree on the third arbitrator, then either may, on behalf of both, request such appointment by the Boston office of the American Arbitration Association, or its successor, or, on its failure, refusal or inability to act, by a court of competent jurisdiction. The Fair Market Rental Value of the Premises for the Extended Term shall be determined by the method commonly known as "baseball arbitration", whereby Landlord's selected arbitrator and Tenant's selected arbitrator shall each set forth its respective determination of the Fair Market Rental Value of the Premises, and the third arbitrator must select one or the other (it being understood that the third arbitrator shall be expressly prohibited from selecting a compromise figure). Landlord's selected arbitrator and Tenant's selected arbitrator shall deliver their determinations of the Fair Market Rental Value of the Premises to the third arbitrator within five (5) Business Days of the appointment of the third arbitrator and the third arbitrator shall render his or her decision within ten (10) days after receipt of both of the other two determinations of the Fair Market Rental Value of the Premises. The third arbitrator's decision shall be binding on both Landlord and Tenant. All arbitrators shall be commercial real estate brokers who are independent from the parties and who have had at least ten (10) years' experience in Comparable Buildings. Each party shall pay the fees of its own arbitrator, and the fees of the third arbitrator shall be shared equally by the parties. In the event Tenant initiates the aforesaid arbitration process and as of the commencement of the Extended Term the amount of the Basic Rent for the Extended Term has not been determined, Tenant shall pay the amount determined by Landlord for the Premises and when the determination has actually been made, an appropriate retroactive adjustment shall be made as of the commencement of the Extended Term if necessary. In the event that such determination shall result in an overpayment by Tenant of any Basic Rent, such overpayment shall be paid by Landlord to Tenant promptly after such determination has been made, and if such determination shall result in an underpayment by Tenant of any Basic Rent, Tenant shall pay any such amounts to Landlord promptly following such determination. As used in this Lease, the term "**Fair Market Rental Value**" shall mean the fixed annual rent and additional rent that owners of Comparable Buildings have agreed to accept,

and nonaffiliated tenants of Comparable Buildings have agreed to pay in current arms-length, nonequity transactions for comparable space, for a term comparable to the Extended Term and taking into account all other then relevant factors.

[Signatures commence on following page]

[Signature page of lease]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be duly executed by persons hereunto duly authorized, as of the date first set forth above.

LANDLORD:

ICE BOX, LLC, a Massachusetts limited liability company

By: ICE BOX MANAGER, LLC, a Massachusetts limited liability company, its Manager

By: /s/ James M. Halliday Name: James M. Halliday

Title: Vice President TENANT:

AURA BIOSCIENCES, INC., a Delaware corporation

By: /s/ Julie Feder
Name: Julie Feder
Title: CFO
Tenant's Federal Taxpayer Identification Number:

EXHIBIT A
Location Plan of Premises

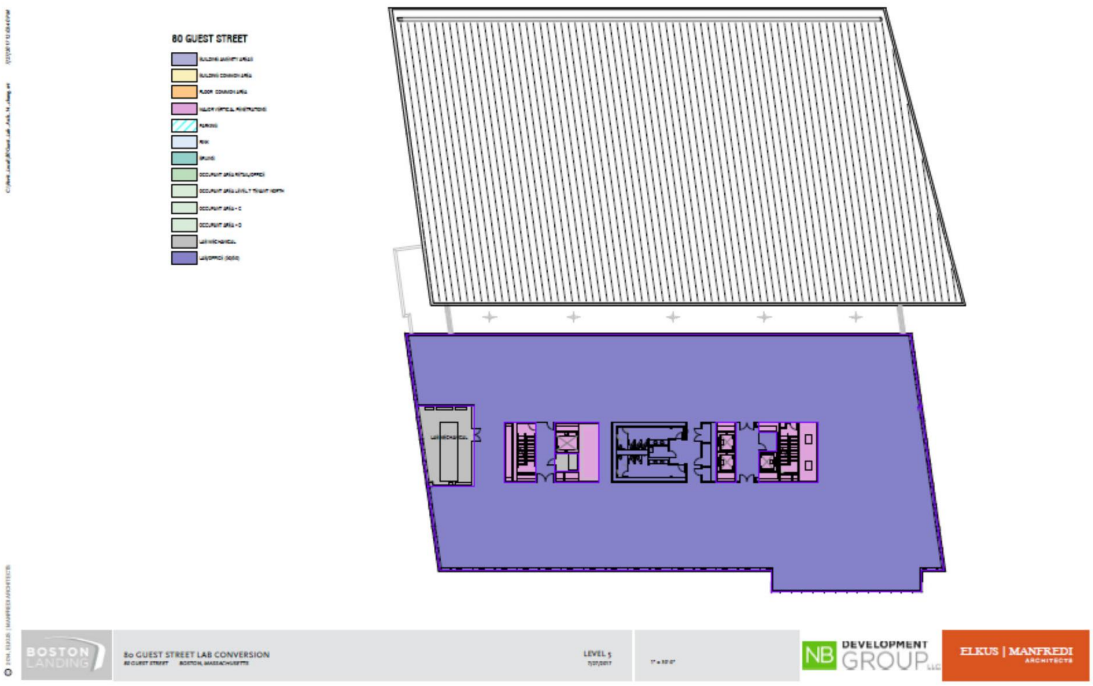
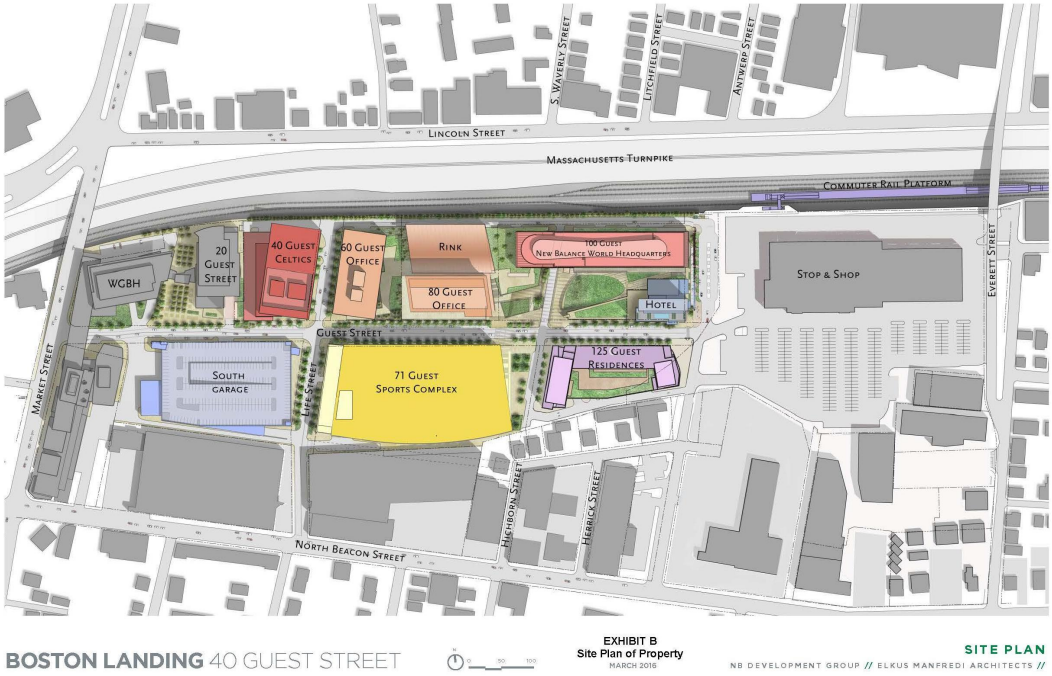


EXHIBIT B
Site Plan of the Boston Landing Project



BOSTON LANDING 40 GUEST STREET

EXHIBIT B
Site Plan of Property
MARCH 2016

SITE PLAN
NB DEVELOPMENT GROUP // ELKUS MANFREDI ARCHITECTS //

EXHIBIT C
Reserved

EXHIBIT D
Tenant Work

1. **DEFINED TERMS**.

Capitalized terms not defined herein shall have the same meaning ascribed to such terms within the Lease (including all other Exhibits to the Lease). In addition, the following terms shall have the following meanings:

"**Building Permit Date**" shall mean the date upon which a building permit for the Tenant Work is first issued or issuable by the applicable governmental authority to Tenant (and/or any contractor, architect or permit expediter processing such building permit on Tenant's behalf), whether or not Tenant (or such contractor, architect or permit expediter) actually obtains the issuance of such permit on such date.

"**Change Order**" shall have the meaning set forth in Section 3 of this **Exhibit D** below. "**Construction Documents**"

shall mean the construction drawings for the Tenant Work,

as approved (and/or deemed approved) by Landlord and Tenant, as the same may be modified (i) by Change Orders, and/or (ii) to meet the requirements of a reviewing governmental authority and comply with all applicable laws, codes, rules and regulations as part of the process of obtaining the issuance of building permits or other approvals for the Tenant Work, provided any material modifications to the approved Construction Documents required by a reviewing governmental authority for the issuance of a building or other permit required to perform the Tenant Work shall be subject to Landlord's approval in accordance with the standards set forth in Section 5.3 of the Lease.

"Landlord's Contribution" shall mean an amount equal to Five Hundred Thousand and 00/100 Dollars ($500,000.00).

"Partial Lien Release" means a partial release of liens to be provided at the time of each payment of a portion of Landlord's Contribution, other than the final payment of the Landlord's Contribution, and relating to payment for the portion of work for which the prior Landlord's Contribution was applied. Partial Lien Releases shall (i) be executed and delivered by Tenant's Contractor and any and all subcontractors and/or materialmen supplying labor and/or materials in connection with the Tenant Work performed under the Tenant's Contractor's construction contract with Tenant, and (ii) be in form and substance reasonably satisfactory to Landlord

"Final Lien Release" means the final release of liens to be provided at the time of final completion of the Tenant Work, and in all events prior to Landlord making final payment of any unfunded portion of Landlord's Contribution relating to the applicable portion of the work in question. Final Lien Releases shall (i) be executed and delivered by Tenant's Contractor and any and all subcontractors and/or materialmen supplying labor and/or materials in connection with the Tenant Work performed under the Tenant's Contractor's construction contract with Tenant, and (ii) be in form and substance reasonably satisfactory to Landlord.

"**Substantial Completion of the Tenant Work**" and phrases of a similar nature shall mean that the Tenant Work shall have been completed substantially in accordance with the

Construction Documents, other than (A) items that require an unusually long lead time for procurement and/or installation, and (B) "punch list" items and other minor defects which will not unreasonably interfere with Tenant's ability to lawfully occupy and use the Premises or prevent the issuance of an final inspection approvals and an occupancy permit or its equivalent. Tenant shall be responsible for obtaining all governmental inspection and other approvals with regard to the Tenant Work and/or which are necessary to permit Tenant to install its furniture, fixtures and equipment in, and to occupy and use, the Premises lawfully for the Permitted Use.

"Tenant's Contractor" means the general contractor selected by Tenant to perform the Tenant Work, which general contractor shall be subject to Landlord's prior approval, which shall not be unreasonably withheld, conditioned or delayed.

"**Tenant's Construction Representative**" shall mean Janice Kettenhofen (jkettenhofen@aurabiosciences.com), or any other representative appointed by Tenant of which Landlord is notified. Tenant's Construction Representative shall have the power to bind Tenant with respect to all matters arising under this **Exhibit D**. In addition, Tenant agrees that written notices or transmittals given by Landlord to Tenant's Construction Representative pursuant to this **Exhibit D** shall be deemed duly delivered to Tenant for all purposes of the Lease (effective as of the earlier to occur of actual receipt or refusal of such delivery by Tenant's Construction Representative).

"**Tenant Work**" shall mean all improvements, alterations, installations and work shown on the Construction Documents, except as otherwise set forth in this **Exhibit D**.

2. **PREPARATION OF PLANS AND SPECIFICATIONS**.

(a) Within the twenty-four (24) month period immediately following the Commencement Date, Tenant shall cause construction drawings for the Tenant Work ("**Construction Drawings**") to be completed and submitted to Landlord for review and approval.

(b) Within ten (10) Business Days after receipt of any Construction Drawings, Landlord shall return such Construction Drawings to Tenant with its objections, suggested modifications and/or approval (which suggested objections and suggested modifications are herein referred to as "**Landlord Modifications**"). Unless Tenant has an objection to any Landlord Modifications, said Construction Drawings shall thereafter be revised by Tenant to reflect the applicable changes. If, upon receipt of any Landlord Modifications, Tenant wishes to take exception thereto, Tenant may do so within ten (10) Business Days after Tenant's receipt of such Landlord Modifications. In such event, Tenant shall confer with Landlord prior to the expiration of such ten (10) Business Day period to resolve all matters with which Tenant was not in agreement. Landlord and Tenant, in good faith, agree to resolve outstanding issues within such ten (10) Business Days, and Tenant thereafter will as soon as reasonably practicable revise the Construction Drawings to reflect such final agreement. After the first submission and resubmission, Landlord and Tenant agree (i) to restrict further objections or disputes to matters which have not previously been agreed upon or accepted by the other party, (ii) to deliver revised submissions or objections within ten (10) days following receipt, and

(iii) to

confer regularly in a good faith effort to resolve all matters in dispute expeditiously. The parties shall, in all events, attempt to reach final agreement on the Construction Drawings as soon as possible. Each party agrees that its failure to respond to a submission or resubmission within the above- referenced time frames shall constitute such party's acceptance of the submission or resubmission in question, or, to the extent applicable, a delay caused by the delinquent party.

(c) Promptly upon final approval of the Construction Documents, Tenant shall submit an application for, and diligently pursue issuance of, a building permit (and any other approvals required) for the Tenant Work. Landlord, at no cost, shall reasonably assist Tenant in the procurement of its building permit including signing any typical permit processing documents. Tenant shall provide Landlord with copies of all written comments, responses, approvals, disapprovals and/or other correspondence received from all applicable governmental authorities in connection with such application and shall otherwise keep Landlord informed regarding the processing of Tenant's building permit application.

3. **PERFORMANCE OF TENANT WORK**.

(a) Promptly after the issuance of a building permit for the Tenant Work, Tenant shall commence and perform the Tenant Work, in order to achieve Substantial Completion of the Tenant Work. Except as provided herein, no deviation from the Construction Documents shall be made by Tenant (other than field changes, substitution of material and other minor changes) except by written change order approved by Landlord ("**Change Order**"), which approval shall not be unreasonably withheld, conditioned or delayed subject to the terms of Landlord's construction and other building rules and regulations. Tenant shall be responsible for the payment of any and all costs to complete the Tenant Work except to the extent Tenant is entitled to receive Landlord's Contribution under this **Exhibit D**. All Tenant Work shall be performed by Tenant's Contractor and subcontractors; and those subcontractors whose cost of work exceeds
$25,000.00 shall have been approved by Landlord, which approval will not be unreasonably withheld, conditioned or delayed. All subcontractors performing the Tenant Work shall be financially sound and able to complete the portion of the Tenant Work for which they are responsible in a prompt and timely fashion. In the performance of the Tenant Work by Tenant or Tenant's Contractor, Tenant shall comply with, and shall cause Tenant's Contractor and all subcontractors to comply with, the provisions of this **Exhibit D**.

(b) The performance of the Tenant Work by Tenant or under Tenant's supervision shall be governed (in addition to the provisions of this **Exhibit D**) by all covenants, agreements, rules and regulations set forth in the Lease with regard to Alterations, as if such provisions were fully restated herein and expressly made applicable to the performance of the Tenant Work. Without limitation, Tenant will enter into one or more construction contracts for the performance of the Tenant Work with the Tenant's Contractor, and will deliver a true, correct and complete copy of such construction contract(s) to Landlord promptly after execution.

(c) The Tenant Work under this **Exhibit D** may not commence nor may Tenant permit Tenant's Contractor or any other contractors and/or subcontractors to commence any work until all required contractors (including Tenant's Contractor) and subcontractor insurance has been obtained, and, if Landlord requests, until such contractor and subcontractor certificates of such insurance have been delivered to Landlord. Such insurance policies shall name the Landlord, Landlord's property manager and Landlord's mortgagee(s) as additional insureds and such other parties as may be reasonably requested by Landlord as additional insureds. Such certificates of insurance shall provide that no material change or cancellation of such insurance coverage shall be undertaken without thirty (30) days' prior written notice to Landlord of the insurer will not include such a provision in the certificates, then Tenant shall provide such notice to Landlord.

(d) Landlord will, upon reasonable prior notice to Tenant, have the right to inspect the performance of the Tenant Work by Tenant's Contractor and any subcontractor(s), and Tenant agrees to cooperate with Landlord to facilitate such inspections, including notifying Landlord prior to any and all government inspections of the Tenant Work so that Landlord's construction manager can be present for such inspections. Landlord shall not unreasonably interfere with the performance of the Tenant Work during the course of any inspections by Landlord pursuant to this subparagraph but Landlord shall have no liability to Tenant in connection with such inspections except to the extent of the negligence or willful misconduct of Landlord or any Landlord Parties and subject to the waiver of claims and subrogation set forth in Section 10.5 of this Lease

(e) Tenant and its contractor performing the Tenant Work shall provide copies of warranties for the Tenant Work and the materials and equipment which are incorporated into the Building and Premises in connection therewith, as well as provide to Landlord all operating and maintenance manuals for all equipment and materials incorporated into the Building and/or Premises as part of the Tenant Work. Tenant shall enforce all such warranties to the extent repairs and/or maintenance is required to be performed by Landlord under this Lease on warranted items covered by such warranties. Without limitation, all aspects of the Tenant Work shall be warranted to be free from defects in design and workmanship for a period of not less than one (1) year from Substantial Completion of the Tenant Work.

(f) Upon Substantial Completion of the Tenant Work, Tenant shall deliver to Landlord a written notice (the "**Completion Notice**") certifying that the Tenant Work is Substantially Complete. Within five (5) days after Tenant delivers the Completion Notice, Tenant and a representative of Landlord shall jointly inspect the Premises with Tenant's architect and Tenant's Contractor. If, as a result of the aforementioned joint inspection, either Landlord or Tenant discovers minor deviations or variations from the Construction Documents of a nature commonly found on a "punch list" (as that term is used in the construction industry), Tenant shall promptly notify Tenant's Contractor of such deviations; provided, however, that in the event of a dispute, Landlord (or Landlord's Representative) and Tenant (or Tenant's Contractor) shall negotiate in good faith, using their reasonable discretion, to determine which items constitute punch list

items. The existence of such punch list items shall not affect the obligation of Tenant to pay Rent, additional rent or any other charges due under this Lease. Tenant's construction contract for the Tenant Work will require that Tenant's Contractor cause all such punch list items to be remedied as soon as is practicable after the date of such joint inspection, and Tenant will use all reasonable and diligent efforts to enforce such obligation.

(g) All Tenant Work shall be performed using contractors and subcontractors which will not create or increase the likelihood of any labor disputes, disharmony, strikes or any other forms of protest at the Property.

4. **PAYMENT OF COSTS; TENANT'S CONTRIBUTION; LANDLORD'S CONTRIBUTION**.

(a) Tenant shall complete the Tenant Work on a lien-free basis. Without limiting Landlord's rights and remedies due to an Event of Default by Tenant due to its violation of this covenant, if a lien is filed or attaches to the Premises, the Building or the Property as a result of the Tenant Work, Landlord shall have the right (but not the obligation) to pay such costs to remove such lien, and to deduct from Landlord's Contribution, or bill Tenant for, any amount so paid by Landlord.

(b) In consideration of Tenant's fulfillment of all of its obligations under this **Exhibit D** and the performance of all of its financial and other obligations under this Lease and subject to the terms of this **Exhibit D**, Landlord agrees to fund Landlord's Contribution (subject to the limitations set forth below) towards the total costs (the "**Total TI Costs**") incurred by Tenant to perform the Tenant Work in or to the Premises, subject to the Landlord Funding Conditions (as hereinafter defined). Notwithstanding any provision of this Section 4(b) to the contrary, Tenant shall have the right to apply up to twenty percent (20%) of the Landlord's Contribution to soft costs associated with the Tenant Work including, but not limited to, architect's and engineer's fees and data and telecom cabling, but not for Tenant's furniture, fixtures and equipment or moving costs. Tenant acknowledges and agrees that Landlord's total financial obligation with respect to the design, permitting, purchase, construction, and installation of the Tenant Work or any other improvements to the Premises shall be limited solely to Landlord's Contribution and Landlord shall have absolutely no obligation to make any payment of the Landlord's Contribution until the requirements set forth in Section 4 (c) of this **Exhibit D** have been satisfied. Tenant shall be solely responsible for any and all Total TI Costs, except to the extent Landlord is obligated to disburse any portion of Landlord's Contribution. The amount of Total TI Costs in excess of Landlord's Contribution shall be paid by Tenant and is herein referred to as the "**Tenant Contribution**." Landlord's Contribution will be payable on a percentage of completion basis, not more than once during each calendar month, and any amount so funded will be paid to Tenant's Contractor (or reimbursed to Tenant if Tenant has already paid Tenant's Contractor and provided evidence of such payment and a partial lien waiver therefor to Landlord) within thirty (30) days following Landlord's receipt of all of the following items:

(i) a payment request (a "**Funding Request**"), seeking that percentage of Landlord's Contribution (less the applicable holdback amount specified below) which corresponds to the percentage of completion of the Tenant Work performed in or to the Premises which has been achieved as of the date of such payment request:

(ii) a certificate of Tenant's architect to Landlord and any other party reasonably designated by Landlord (such as Landlord's mortgagee, if any) specifying the percentage of completion of the Tenant Work performed in or to the Premises in accordance with the Construction Documents which Tenant has achieved as of the date of such certificate, which shall in no event be less than the sum of (A) the percentage of Landlord's Contribution which Tenant is then seeking to have disbursed (exclusive of any holdback amount hereinafter provided in this **Exhibit D**), *plus* (B) the percentage of Landlord's Contribution (exclusive of any holdback amount previously impounded) which has previously been disbursed to Tenant in connection with any and all prior payment requests made by Tenant for the Premises (and in any payment request seeking final payment, such certificate shall include a certification by the Tenant's architect that the Tenant Work for the Premises has been Substantially Completed in accordance with the Construction Documents, and that all punch list items noted by the parties have also been fully completed);

(iii) a copy of the temporary or final certificate of use and occupancy (or its equivalent) issued to Tenant by the applicable governmental authority with respect to the Premises (final payment of Landlord's Contribution only). If the temporary certificate of use and occupancy is provided, Tenant shall provide the final certificate of use and occupancy as soon as it is issued by the applicable governmental authority;

(iv) a copy of complete as-built plans and specifications for the Tenant Work to the Premises (final payment of Landlord's Contribution only);

(v) evidence that Tenant has funded the Tenant Contribution prior to any payment request (and each prior payment request made by Tenant), as defined in and determined pursuant to Section 4(c), below; and

(vi) Partial Lien Release for the Tenant Work with respect to which payment is being requested, other than the final payment, and a Final Lien Release for the final payment of the Landlord's Contribution.

Upon receipt and approval of all such items and subject to Landlord's right to dispute the amount properly due pursuant to this **Exhibit D** in connection with a Funding Request, Landlord shall, within thirty (30) days following receipt of the Funding Request, disburse the amount requested to be funded to Tenant. If Tenant fails to pay any portion of the Tenant Contribution as and when required, Landlord shall have the right to withhold any further funding of Landlord's Contribution pending Tenant's delivery of evidence reasonably satisfactory to

Landlord that Tenant has made such Tenant Contribution and any such withholding by Landlord shall not be deemed a delay by Landlord or otherwise postpone Tenant's obligation to pay Rent under this Lease. In addition, Landlord shall have the right to hold back five percent (5%) of the amount of requested from any Funding Request until such time as, in addition to Tenant's satisfaction of the requirements otherwise applicable to a final payment under clauses (i) –
(vi) above of this Section 4(b), Landlord has received a certificate from Tenant's architect that all punch list items have been corrected or completed; provided, however, such hold back shall not be in addition to the retainage under Tenant's construction contract for the Tenant's Work and in the event Tenant submits a Funding Request that reflects at least a five percent (5%) retainage under Tenant's construction contract for the Tenant's Work then Landlord will not withhold such additional five percent (5%) hold back and will retain a five percent (5%) hold back only from the final Funding Request in accordance with this **Section 4(b)**.

(c) Notwithstanding anything in this Lease, including this **Exhibit D** to the contrary, Landlord's obligation to make any payment of the Landlord's Contribution is conditioned upon there being no uncured Event of Default under this Lease.

Without limiting Tenant's obligations to complete all of the Tenant Work to the Premises in accordance with the terms hereof, Tenant acknowledges and agrees that Landlord shall have no obligation to pay or fund the final installment of Landlord's Contribution if the Tenant Work to the Premises is not substantially complete and conditions (i) through (vi) above are not satisfied within two (2) years following the Commencement Date of this Lease.

5. **ADDITIONAL PROVISIONS REGARDING THE TENANT WORK**.

With regard to the performance of the Tenant Work pursuant to this **Exhibit D**, the following provisions shall apply:

(a) Insurance Requirements During Construction.

(i) Tenant shall secure, pay for, and maintain, or cause its contractors and subcontractors to secure, pay for, and maintain, during the continuance of construction and fixturing work within the Premises, all of the insurance policies required in the amounts as set forth herein, together with such insurance as may from time to time be required by city, county, state or federal laws, codes, regulations or authorities.

(ii) The Tenant Work under this **Exhibit D** may not commence nor may Tenant permit its contractors and/or subcontractors to commence any work until all required insurance has been obtained, and, if Landlord requests, until Tenant's, or its contractors and subcontractors, certificates of such insurance have been delivered to Landlord. Tenant's or its contractors and subcontractors insurance policies shall name the Landlord, Landlord's property manager, and Landlord's mortgagee(s) as additional insureds and such other parties as may be

reasonably requested by Landlord as additional insureds. Such certificates of insurance shall provide that no change or cancellation of such insurance coverage shall be undertaken without thirty (30) days' prior written notice to Landlord; provided, however, in the event such insurer is unable to provide such notice, Tenant shall be obligated to provide such notice to Landlord.

(iii) Landlord shall have the right to require Tenant, and Tenant shall have the duty, to stop work in the Premises immediately if any of the insurance coverage Tenant or its contractors and subcontractors are required to carry herein lapses during the course of such work, in which event the Tenant Work may not be resumed until the required insurance is obtained and satisfactory evidence of same is provided to Landlord.

(iv) In the event Tenant employs a contractor or subcontractor to perform all or part of the Tenant Work, Tenant shall carry, or cause Tenant's Contractors to carry, General Contractor's and Subcontractor's Required Minimum Coverages and Limits of Liability as follows (the insurance required under this **Exhibit D** shall be in addition to any and all insurance required to be procured by Tenant pursuant to the terms of the Lease):

(A) Worker's Compensation, as required by state law, and Employer's Liability Insurance with a limit of not less than $1,000,000 (or more if required by the law of the State) and any insurance required by any Employee Benefit Act or similar statute applicable where the work is to be performed, as will protect the contractor and subcontractors from any and all liability under the aforementioned act(s) or similar statute.

(B) Comprehensive General Liability Insurance (including Contractor's Protective Liability) in an amount not less than $2,000,000 per occurrence whether involving personal injury liability (or death resulting therefrom) or property damage liability or a combination thereof (combined single limit coverage) with a minimum aggregate limit of $2,000,000. Such insurance shall insure Tenant's general contractor against any and all claims for personal injury, death, and damage to the property of others arising from its operations under its contract, whether such operations are performed by Tenant's contractors, subcontractors, or sub-subcontractors, or by anyone directly or indirectly employed by any of them.

(C) Comprehensive Automotive Liability Insurance, for the ownership, maintenance, or operation of any automotive equipment, whether owned, leased, or otherwise held, including employer's non- ownership and hired car liability endorsements, in an amount not less than $2,000,000 per occurrence and $2,000,000 aggregate, combined single limit bodily injury and property damage liability.

(D) Builder's risk insurance in such amount as is commensurate with the scope and Total TI Cost of such work.

(b) Minimize Disturbances During Construction. In the performance of the Tenant Work, Tenant shall cause its contractor(s) to use reasonable and diligent efforts not to unreasonably interfere with ongoing operations in the Building and the Property. Without limiting the foregoing, Tenant agrees to cause its contractor to use reasonable and diligent efforts to minimize excess noise, and to limit its construction activities to the portion of the Premises being constructed and those portions of the Common Areas (if any) in which Tenant is permitted to stage materials and perform the Tenant Work in accordance with the Construction Documents.

(c) Utilities During Construction. Tenant shall be responsible for all utility costs associated with the performance of the Tenant Work and shall either supply its own electricity and other utilities, or shall reimburse Landlord for all utility costs associated with such work. Tenant shall keep all construction areas reasonably clean and free of trash and debris, and shall police the activities of its contractors, subcontractors and their respective employees with regard to keeping the Building and the Property clean. Tenant shall also use reasonable and diligent efforts to minimize any disturbance to the other tenants and occupants of the Building and Property in the course of such construction activities. Tenant agrees to follow (or cause its contractors and subcontractors to follow) all reasonable directions given to Tenant or its contractors or subcontractors by Landlord's Construction Representative and to otherwise comply with any reasonable rules and regulations established by Landlord from time to time with regard to Tenant's construction activities within the Building. Tenant's construction contract shall indemnify Tenant and Landlord from damages, losses, and expenses associated with the acts and omissions of Tenant's Contractor, its agents, employees, and subcontractors.

(d) Violations with respect to the Tenant Work. In the event (i) of any material violation of this **Exhibit D**, or (ii) the construction of any improvements in the Premises which are not within the scope of the Construction Documents (or other Landlord-approved plans), Landlord shall have the right to cause Tenant and Tenant's contractor to stop the Tenant Work and to remove any such improvements which have been constructed in violation of the Construction Documents (or other Landlord- approved plans) or this **Exhibit D** at Tenant's expense, and to seek any and all appropriate legal and equitable relief in order to enforce the provisions of this **Exhibit D**.

(e) Without limiting the generality or applicability of this **Exhibit D** or the Lease, Tenant agrees that the following provisions shall apply to the performance of the Tenant Work:

(i) In performing any plumbing work which is contemplated under the Construction Documents (or other Landlord-approved plans if required by the terms of the Lease) which may require removal of floor slab in corridors or areas which are within the common areas of the Building, Tenant agrees: (A) to conduct such work expeditiously and in a manner which is calculated to minimize, to the fullest extent practicable, any inconvenience to Landlord's

building personnel,

and other Building tenants, occupants and invitees who use such common corridors; (B) upon completion of the plumbing work, to restore the finishes within such common corridors to their original condition; and (C) if materials necessary to match such finishes, upon restoration, to the finish of the portions of the corridor which were not removed or affected by such work or alterations, are not available, Tenant shall be responsible to restore the entire corridor to a uniform finish acceptable to Landlord in Landlord's sole but reasonable discretion, consistent with the quality of the existing finish.

(ii) In performing any portions of the Tenant Work which involve construction work which affects the exterior portions of the Building, the Property or Common Areas, Tenant agrees that it shall, at Tenant's sole expense, restore all areas of the Building's or Property's exterior and/or Common Areas, including without limitation all adjacent planting areas, sidewalks and parking areas, affected by the performance of such work or alterations to their original condition upon the completion of such portions of the Tenant Work.

(iii) Tenant shall, as part of the Tenant Work, protect and restore all work areas of the Building and Property (including without limitation, any portions of the Common Areas of the Property) required for access to the Premises, or otherwise utilized or affected in performing the Tenant Work, including, but not limited to, the Building roof, common corridor floors, walls, and ceilings, floor penetrations and chase wall penetrations. Tenant shall use only qualified roofing contractors for penetrations and reflashing of affected roof areas (if any), which roofing contractors shall be subject to Landlord's approval, and Tenant and such contractor shall warrant to Landlord the integrity of any such roof or exterior penetrations that are performed as part of the Tenant Work, and that the same are free from leakage and are otherwise properly waterproof. Tenant shall further ensure (and warrant to Landlord) that all floor penetrations that are performed as part of the Tenant Work are properly fire-stopped, in accordance with applicable building and fire codes and prudent construction practices. Landlord's construction manager and/or representatives shall be advised at the time Tenant commences any portion of the Tenant Work involving the exterior of the Building, the Property, the Building roof, the common corridors, and all floor to floor penetrations, and all such work shall be subject to the inspection and approval of Landlord (and in the case of work involving the exterior of the Building, shall be supervised by Landlord's construction manager and/or other representatives). In regard to the foregoing right of inspection and approval, Tenant and its contractor shall, upon reasonable prior notice, permit such construction manager and/or representatives free access to all affected areas of the Premises and Building necessary for Landlord to conduct such inspections and/or supervision.

EXHIBIT E
Commencement Date Letter

____, 2022

[Name of Contact] [Name of Tenant]
[Address of Tenant]

RE: [*Name of Tenant]*
[Premises Rentable Area and Floor] [Address of Building]

Dear *[Name of Contact]:*

Reference is made to that certain Lease, dated as of _____, 20_, between *[Landlord]*, as Landlord and *[Tenant]* as Tenant, with respect to Premises on the _____floor of the above-referenced building. In accordance with Section [__] of the Lease, this is to confirm that the Commencement Date of the Term of the Lease occurred on _____, and that the Term of the Lease shall expire on ____.

If the foregoing is in accordance with your understanding, kindly execute the enclosed duplicate of this letter, and return the same to us.

Very truly yours,

[Landlord]

Accepted and Agreed:

[Tenant]

By:_____ Name:__ Title:___ Date:___

By:_____ Name: __ Title:

EXHIBIT F

Building Operating Expenses and Laboratory Operating Expenses

Building Operating Expenses shall include the following expenses, without limitation, and reasonably and equitably allocated to the Office Portion of the Building's cost pool:

1. All expenses incurred by Landlord or Landlord's agents which shall be directly related to employment of personnel, including amounts incurred for wages, salaries for services, payroll, social security, unemployment and similar taxes, workmen's compensation insurance, disability benefits, pensions, hospitalization, retirement plans and group insurance, uniforms and working clothes and the cleaning thereof, and expenses imposed on Landlord or Landlord's agents pursuant to any collective bargaining agreement for the services of employees of Landlord or Landlord's agents in connection with the operation, repair, maintenance, cleaning, management and protection of the Property, including, without limitation, day and night supervisors, manager, accountants, bookkeepers, janitors, carpenters, engineers, mechanics, electricians and plumbers and personnel engaged in supervision of any of the persons mentioned above; provided that, if any such employee is also employed on other property of Landlord, such compensation shall be suitably prorated among the Property and such other properties.

2. The cost of services, utilities, materials and supplies furnished or used in the operation, repair, maintenance, cleaning, management and protection of the Property.

3. The cost of replacements for tools and other similar equipment used in the repair, maintenance, cleaning and protection of the Property, provided that, in the case of any such equipment used jointly on other property of Landlord, such costs shall be suitably prorated among the Property and such other properties.

4. Where the Property is managed by Landlord or an affiliate of Landlord, management fees equal to three percent (3%) of Gross Receivable Rents for the Building ("**Gross Receivable Rents for the Building**" for the purposes hereof being defined as annual Basic Rent, Building Operating Expenses, with the exception of the aforesaid management fee, Laboratory Operating Expenses, and Taxes for the Building for the relevant year), whether or not actually paid, together with amounts accrued for legal and other professional fees relating to the Property, but excluding such fees and commissions paid in connection with services rendered for securing or renewing leases and for matters not related to the normal administration and operation of the Property.

5. Commercially reasonable premiums and deductibles incurred for insurance against damage or loss to the Property from such hazards as Landlord shall determine, including, but not by way of limitation, insurance covering loss of rent attributable to any such hazards, and public liability insurance.

6. Replacements to the roof or other structural elements or other capital expenditures or improvements but only to the extent (i) Landlord, during the Term, installs or replaces any equipment or other item in or to the Building which Landlord anticipates in good faith will effect an energy savings or will make the Building or any part thereof more energy efficient or for the purpose of reducing Operating Expenses, or (ii) which are required due to changes in applicable Laws or as a result of new Laws not in effect as of the Effective Date of the Lease (collectively, the "**Permitted Capital Expenditures**"), provided, however, that only the annual charge-off of such Permitted Capital Expenditure shall be included in each Operating Year's Operating Expenses (or a prorata amount thereof for any partial Operating Year). Annual charge-off shall be determined by dividing the original Permitted Capital Expenditure plus an interest factor, reasonably determined by Landlord, as being the interest rate then being charged for long-term mortgages by institutional lenders on like properties within the locality in which the Property is located, by the number of years of useful life of the Permitted Capital Expenditure; and the useful life shall be determined reasonably by Landlord in accordance with GAAP and practices in effect at the time of making such expenditure.

7. Cost of operation of the Building and the other areas of the Complex as more specifically provided in the Lease, including those incurred in discharging the obligations under Article 7 of the Lease; provided, however, there shall be excluded from the Building Operating Expenses the expenses that solely relate to and benefit only the Retail Portion of the Building or the Laboratory Portion of the Building and/or do not serve or benefit the Office Portion of the Building in any manner.

8. The Building's share (as reasonably determined by Landlord) of expenses related to the operation of the open areas, public areas and amenities, plazas, common areas, facilities and other non-leasable areas of the Complex and Complex's Percentage Share (as defined in the Declaration) of the CAM Charges for the Boston Landing Project allocated to the Complex under the Declaration, including the Complex's share of all costs incurred to operate the shuttle service for the Boston Landing Project and like amenities for use of tenants of the Building either alone or in common with tenants of other buildings in the Complex or the Boston Landing Project (excluding the costs to construct and initially fixture or furnish any such amenities), provided that there shall be no duplication in any such expense charged to Tenant as Operating Expenses hereunder.

9. The costs to operate, repair and maintain Base Building Systems and Common Facilities in the Building (including, without limitation, utility and other costs to maintain, repair and operate Base Building Systems , if any, serving the Building, including, without limitation, the general costs to operate, repair and maintain the Building (including, without limitation, insurance costs for the Building); provided, however, (1) in no event shall Landlord be entitled to pass through greater than one hundred percent (100%) of those costs for the operation,

repair and maintenance of Base Building Systems and Common Facilities due to the

same being allocated to both the Office Portion, Retail Portion or Laboratory Portion of the Building, and (2) there shall be excluded from the Building Operating Expenses the expenses that solely relate to and benefit only the Retail Portion of the Building or the Laboratory Portion of the Building and do not serve or benefit the Office Portion of the Building in any manner.

10. Costs for electricity, water and sewer use charges, gas and other utilities supplied to the Property and not paid for directly by tenants.

11. Taxes (as hereinafter defined). "**Taxes**" shall mean (i) all ad valorem real property taxes, assessments (including betterment, special or otherwise), levies, fees and all other government levies, exactions and charges of every kind and nature, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time prior to or during the Term, imposed or levied upon or assessed against the Property or any portion thereof or against any Basic Rent, Additional Rent or other rent of any kind or nature payable to Landlord by anyone on account of the ownership, leasing or operation of the Property, or which arise on account of or in respect of the ownership, development, leasing, operation or use of the Property or any portion thereof; (ii) all gross receipts taxes or similar taxes imposed or levied upon, assessed against or measured by any Basic Rent, Additional Rent or other rent of any kind or nature or other sum payable to Landlord by anyone on account of the ownership, development, leasing, operation, or use of the Property or any portion thereof; (iii) all value added, use and similar taxes at any time levied, assessed or payable on account of the ownership, development, leasing, operation, or use of the Property or any portion thereof; (iv) the Building's pro rata share of the Taxes allocated to the Complex under the Declaration, and (v) reasonable expenses of any proceeding for abatement of any of the foregoing items included in Taxes, but the amount of special taxes or special assessments included in Taxes shall be limited to the amount of the installment (plus any interest, other than late charges and penalty interest, payable thereon) of such special tax or special assessment required to be paid during the year in respect of which such Taxes are being determined. There shall be excluded from Taxes all income, estate, succession, gift, franchise, inheritance and transfer taxes of Landlord (or any affiliate thereof); provided, however, that if at any time during the Term, the present system of ad valorem taxation of real property shall be changed so that a gross receipts capital levy, franchise, income, profits, sales, rental, use and occupancy, or other new or additional tax or charge shall in whole or in part be substituted for, or added to, such ad valorem tax and levied against, or be payable by, Landlord with respect to the Property or any portion thereof, such tax or charge shall be included in the term "**Taxes**" for the purposes of this Article.

12. Betterment assessments, provided the same are apportioned equally over the longest period permitted by law, and to the extent, if any, not included in Taxes.

13. Amounts paid to independent contractors for services, materials and supplies furnished for the operation, repair, maintenance, cleaning and protection of the Property not in excess of market rates for Comparable Buildings.

14. Except to the extent covered by warranty or an insurance claim, any convector units, filters or heat pump repairs and replacements.

Laboratory Operating Expenses shall include the following, without limitation and without duplication of any other Operating Expenses or Taxes charged to Tenant under this Lease:

1. All costs of any kind paid or incurred by Landlord in connection with the operation or maintenance of the Laboratory Systems and the provision of services that exclusively serve the Laboratory Portion of the Building, which shall include, without limitation, costs of repairs and replacements to Laboratory Systems; costs of utilities furnished to the Laboratory Systems and any Common Facilities exclusively serving the Laboratory Systems; sewer fees; HVAC; maintenance or replacement of equipment utilized for operation and maintenance of the Laboratory Systems; license, permit and inspection fees; sales, use and excise taxes on goods and services purchased by Landlord in connection with the operation, maintenance or repair of the Laboratory Systems; other expenses incurred in connection with the operation, maintenance or repair of the Laboratory Systems; accounting, legal and other professional fees and expenses incurred in connection with the Laboratory Systems; Permitted Capital Expenditures related to the Laboratory Systems; costs of complying with applicable Laws (except to the extent such costs are incurred to remedy non-compliance as of the Commencement Date with applicable Laws); costs to keep the Laboratory Systems in compliance with, or costs or fees otherwise required under or incurred pursuant to any covenants, conditions or restrictions associated with the Property or Complex, including insurance premiums attributable to Laboratory Systems, and premiums for commercial general liability, property casualty, earthquake, terrorism and environmental coverages; portions of insured losses to Laboratory Systems paid by Landlord as part of the deductible portion of a loss pursuant to the terms of insurance policies; service contracts; costs of services of independent contractors retained to do work of a nature referenced above; and costs of compensation (including employment taxes and fringe benefits) of all persons who perform regular and recurring duties connected with the day-to-day operation and maintenance of Laboratory Systems.

2. Any taxes or assessments in lieu thereof imposed separately on any Laboratory Systems or reasonably determined by Landlord to be attributable to any Laboratory Systems and not other portions of the Property or Complex.

3. Cost of operation of the Building and the other areas of the Complex as more specifically provided in the Lease, including those incurred in discharging the obligations under Article 7 of the Lease; provided, however, there shall be excluded from the Laboratory Operating Expenses the expenses that solely relate to and benefit only the Retail Portion of the Building or the Office Portion

of the

Building and do not serve or benefit the Laboratory Portion of the Building in any manner.

If Landlord shall receive any tax refund or reimbursement of Taxes or sum in lieu thereof with respect to any Tax Year all or any portion of which falls within the Term, then out of any balance remaining thereof after deducting Landlord's expenses in obtaining such refund, Landlord shall, provided there does not then exist an Event of Default, credit an amount equal to such refund or reimbursement or sum in lieu thereof (exclusive of any interest, and apportioned if such refund is for a Tax Year a portion of which falls outside the Term,) multiplied by Tenant's Pro Rata Share against the monthly installments of Additional Rent next due under this Lease (or refund such amount to Tenant if the Term has ended and Tenant has no further obligations to Landlord).

Notwithstanding anything to the contrary set forth in the Lease, Building Operating Expenses and Laboratory Operating Expenses shall not include the following:

(i) Any cost or expense to the extent to which Landlord is paid or reimbursed (other than as a payment for Operating Expenses), including work or services performed for any tenant (including Tenant) or the cost of any item for which Landlord has been paid or reimbursed by insurance, warranties, service contracts, condemnation proceeds or otherwise;

(ii) The cost of any work or services performed for any other property other than the Building or Complex;

(iii) Leasing commissions, attorneys' fees, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Building;

(iv) Costs associated with the operation of the business of the entity which constitutes Landlord, Landlord's management company or any affiliate of Landlord as the same are distinguished from the costs of operation of the Building;

(v) Costs (including permit, license, and inspection fees) incurred in renovating, improving, decorating, painting or redecorating vacant leasable space or space for tenants, the cost of tenant improvements, build out allowances, moving expenses, assumption of rent under existing leases and other concessions incurred in connection with leasing space in the Building or in the Complex;

(vi) Depreciation and amortization on the Building, except as expressly permitted elsewhere in the Lease;

(vii) Overhead and profit and other costs paid to subsidiaries or affiliates of Landlord for services or materials on or to the Property or for supplies or other materials (exclusive of the management fee set forth in Item #4 above), to the

extent that

the costs of the service, supplies or materials exceed the competitive costs of the services, supplies or materials were they not provided by a subsidiary or affiliate;

(viii) Interest on debt or amortization payments on mortgages or deeds of trust or any other debt for borrowed money and any other costs and expenses incurred in connection with the financing and/or refinancing of the Building, Property and/or Complex;

(ix) Items and services which Tenant is not entitled to receive under this Lease but which Landlord provides selectively to one or more tenants of the Building other than Tenant or for which Landlord is separately reimbursed;

(x) Costs incurred, in excess of the commercially reasonable deductible, in connection with repairs or other work needed to the Building and/or the Complex because of fire, windstorm, or other casualty or cause required to be insured against by Landlord under this Lease or the exercise of eminent domain; provided, however, in no event shall any self-insurance retentions be charged to Tenant, other than the aforementioned commercially reasonable deductible;

(xi) Any costs, fines or penalties incurred because Landlord violated any Law;

(xii) Capital expenditures other than Permitted Capital Expenditures;

(xiii) Legal, auditing, consulting and professional fees and other costs, (other than those legal, auditing, consulting and professional fees and other costs incurred in connection with the normal and routine maintenance and operation of the Building), including, without limitation, those: (i) paid or incurred in connection with financings, refinancings or sales of any Landlord's interest in the Building or the Complex, (ii) relating to specific disputes with tenants, and (iii) relating to any special reporting required by securities laws;

(xiv) Costs incurred in performing work or furnishing services for any tenant (including Tenant), whether at such tenant's or Landlord's expense, to the extent that such work or services is in excess of any work or service that Landlord is obligated to furnish to Tenant (e.g., if Landlord agrees to provide extra cleaning to another tenant, the cost thereof would be excluded since Landlord is not obligated to furnish extra cleaning to Tenant);

(xv) The cost of repairs or replacements incurred by reason of fire or other casualty or condemnation other than costs not in excess of a reasonable deductible on any insurance maintained by Landlord;

(xvi) Insurance premiums to the extent any tenant requires Landlord to purchase additional insurance because of such tenant's use of the Building;

(xvii) Any advertising, promotional or marketing expenses for the Building, the Complex and the Boston Landing Project including any merchant’s

association except for expenses passed through under the Declaration;

(xviii) The cost of any service or materials (exclusive of the management fee) provided by any party related to Landlord, to the extent such costs exceed the reasonable cost for such service or materials absent such relationship in buildings similar to the Building in the vicinity of the Building;

(xix) Payments for rented equipment, the cost of which equipment would constitute a capital expenditure if the equipment were purchased to the extent that such payments exceed the amount which could have been included in Operating Expenses had Landlord purchased such equipment rather than leasing such equipment;

(xx) Penalties, damages, and interest for late payment or violations of any obligations of Landlord, including, without limitation, taxes, insurance, equipment leases and other past due amounts;

(xxi) Contributions to charitable organizations;

(xxii) Costs incurred in removing the property of former tenants or other occupants of the Building;

(xxiii) The cost of testing, remediation or removal of Hazardous Materials in the Building, the Complex or the Boston Landing Project required by Environmental Laws;

(xxiv) The cost of acquiring, installing, moving or restoring objects of art;

(xxv) Wages, salaries, or other compensation paid to any executive employees above the grade of senior property or regional property manager at the Complex;

(xxvi) The net (i.e. net of the reasonable costs of collection) amount recovered by Landlord under any warranty or service agreement from any contractor or service provider shall be credited against Operating Expenses;

(xxvii) Cost or expenses due to the willful misconduct or negligence of Landlord or any of the Landlord Parties;

(xxviii) Bad debt expenses;

(xxix) Ground lease payments, if any (except to the extent payment is for Taxes);

(xxx) Costs to finance or refinance debt, create and/or file condominium maps or documents or sell the Building or the Complex;

(xxxi) Costs related to the Rink Building; or

(xxxii) Reserves.

EXHIBIT G

Rules and Regulations of Building The following

regulations are generally applicable:

1. The public sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by Tenant (except as necessary for deliveries) or used for any purpose other than ingress and egress to and from the Premises.

2. No awnings, curtains, blinds, shades, screens or other projections shall be attached to or hung in, or used in connection with, any window of the Premises or any outside wall of the Building. Such awnings, curtains. blinds, shades, screens or other projections must be of a quality, type, design and color, and attached in the manner, approved by Landlord.

3. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor, if the Building is occupied by more than one tenant, displayed through interior windows into the common areas of the Building, nor placed in the halls, corridors or vestibules.

4. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were designed and constructed, and no sweepings, rubbish, rags, acids or like substances shall be deposited therein. All damages resulting from any misuse of the fixtures shall be borne by the Tenant.

5. Tenant shall not use the Premises or any part thereof or permit the Premises or any part thereof to be used as a public employment bureau or for the sale of property of any kind at auction.

6. Tenant must, upon the termination of its tenancy, return to the Landlord all locks, cylinders and keys to offices and toilet rooms of the Premises.

7. Landlord reserves the right to exclude from the Building after business hours and at all hours on days other than Business Days all persons connected with or calling upon the Tenant who do not present a pass to the Building signed by the Tenant or who are not escorted in the Building by an employee of Tenant. Tenant shall be responsible for all persons for whom it issues any such pass and shall be liable to the Landlord for all wrongful acts of such persons.

8. The requirements of Tenant will be attended to only upon application at the Building Management Office. Employees of Landlord shall not perform any work or do anything outside of their regular duties, unless under special instructions from the office of the Landlord.

9. There shall not be used in any space in the Building, or in the public halls of the Building, either by Tenant or its agent, contractors, employees or others, in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and side guards.

10. No bicycles, vehicles or animals (except service animals) of any kind shall be brought into or kept in or about the Premises.

11. No tenant shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or any neighboring building or premises or those having business with them whether by use of any musical instrument, radio, talking machine, unmusical noise, whistling, singing, or in any other way. No tenant shall throw anything out of the doors, windows or skylights or down the passageways.

12. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purpose.

13. No smoking shall be permitted in the Premises or the Building. Smoking shall only be permitted in smoking areas outside of the Building which have been designated by the Landlord. Tenant shall comply with all applicable "No Smoking" and if Tenant is required by Law to adopt a written smoking policy, a copy of said policy shall be on file in the property manager's office in the Building.

14. Landlord shall have the right, exercisable without notice and without liability to any tenant, to change the name and street address of the Building.

15. Tenant shall not use the name of the Building for any purpose other than Tenant's business address; Tenant shall not use the name of the Building for Tenant's business address after Tenant vacates the Premises; nor shall Tenant use any picture or likeness of the Building in any circulars, notices, advertisements or correspondence. Tenant shall not represent itself as being associated with any company or corporation by which the Building may be known.

16. No article which is explosive or dangerous is allowed in the Building.

17. Room-to-room canvassing to solicit business from other tenants of the Building is not permitted.

18. Tenant shall not waste electricity, water or air-conditioning and shall cooperate fully with Landlord to assure the most effective and efficient operation of the Building's heating and air-conditioning systems. Tenant shall participate in any recycling programs undertaken by Landlord or required by applicable Laws.

19. No locks or similar devices shall be attached to any door except by Landlord and Landlord shall have the right to retain a key to all such locks. Tenant may not install any locks without Landlord's prior approval, which approval shall not be unreasonably withheld.

20. To the extent permitted by law, Tenant shall not cause or permit picketing or other activity which would interfere with the business of Landlord or any other tenant or occupant of the Building, or distribution of written materials involving its employees in or about the Building, except in those locations and subject to time and other limitations as to which Landlord may give prior written consent.

21. Tenant shall not cook, otherwise prepare or sell any food or beverages in or from the Premises or use the Premises for housing accommodations or lodging or sleeping purposes except that Underwriters'
Laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea and similar beverages for Tenant's employees and visitors provided such use is in compliance with applicable Laws and does not disturb other tenants in the Building with odor, refuse or pests.

22. All office equipment of any electrical or mechanical nature shall be placed by Tenant in the Premises in settings approved by Landlord to absorb or prevent any vibration, noise or annoyance. Tenant shall not permit the use of any apparatus for sound production or transmission in such manner that the sound so transmitted or produced shall be audible or vibrations therefrom shall be detectable beyond the Premises; nor permit objectionable odors or vapors to emanate from the Premises.

23. Tenant shall not construct or place partitions, furniture or other obstructions that interfere with Landlord's free access to mechanical installations located in the Building, including air-cooling, fan, ventilating and machine rooms and mechanical and electrical closets, the proper functioning of the Base Building Systems or the moving of Landlord's equipment to and from the enclosures containing said installations. Neither Tenant nor any contractor, invitee or licensee of Tenant shall at any time enter said enclosures or tamper with, adjust, or otherwise affect in any manner such mechanical installations

24. No floor covering shall be affixed to any floor in the Premises by means of glue or other adhesive without Landlord's prior written consent not to be unreasonably withheld, conditioned or delayed.

25. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

26. Tenant shall cause all freight to be delivered to or removed from the Building and the Premises in accordance with the requirements established by Landlord therefor. Deliveries shall be made during Building Service Hours and are subject to local municipal noise ordinances. No deliveries shall be made that impede or interfere with other tenants in or the operation of the Property or Complex.

27. Tenant shall comply with all orders, requirements and conditions now or hereafter imposed by applicable Laws or Landlord ("**Waste Regulations**") regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash generated by Tenant (collectively, "**Waste Products**"), including (without limitation) the separation of Waste Products into receptacles reasonably approved by Landlord and the removal of such receptacles in accordance with any collection schedules prescribed by Waste Regulations.

28. Tenant shall store all of its trash, garbage and Hazardous Materials in receptacles within its Premises or in receptacles designated by Landlord outside of the Premises, including a dumpster at the loading dock for the disposal of trash and garbage other than Hazardous Materials, which dumpster shall be supplied by Landlord subject to Force Majeure (the "**Dumpster**"). Tenant shall not place in any such receptacle any material that cannot be disposed of in the ordinary and customary manner of trash or garbage disposal. Any Hazardous Materials transported through outside of the Premises shall be held in secondary containment devices. With the exception of items placed in the Dumpster, Tenant shall be responsible, at its sole cost and expense, for Tenant's removal of its trash, garbage and Hazardous Materials.

29. The rules and regulations set forth in Attachment I to this Exhibit, which is by this reference made a part hereof, are applicable to any Alterations being undertaken by or for Tenant in the Premises pursuant to **Section 5.3** of the Lease.

Attachment I to Exhibit G
Rules and Regulations for Tenant Alterations

A. General

1. All Alterations made by Tenant in, to or about the Premises shall be made in accordance with the requirements of this Exhibit and by union contractors or mechanics approved by Landlord.

2. Tenant shall, prior to the commencement of any work, submit for Landlord's written approval, complete plans for the Alterations, with full details and specifications for all of the Alterations, in compliance with Section D below.

3. Alterations must comply with the Building Code applicable to the Property and the requirements, rules and regulations and any other governmental agencies having jurisdiction.

4. No work shall be permitted to commence before Tenant obtains and furnishes to Landlord copies of all necessary licenses and permits from all governmental authorities having jurisdiction.

5. All demolition, removals or other categories of work that may inconvenience other tenants or disturb Building operations, must be scheduled and performed before 7:00 a.m. or after 6:00 p.m. and Tenant shall provide the Building manager with at least 48 hours' notice prior to proceeding with such work.

6. All inquiries, submissions, approvals and all other matters shall be processed through Landlord's property manager.

7. All work, if performed by a contractor or subcontractor, shall be subject to reasonable supervision and inspection by Landlord's representative. Such supervision and inspection shall be at Tenant's sole expense and Tenant shall pay Landlord's reasonable charges for such supervision and inspection as Additional Rent within thirty (30) days after receiving Landlord's invoice therefor.

B. Prior to Commencement of Work

1. Tenant shall submit to the property manager a request to perform the work. The request shall include the following enclosures:

(i) A list of Tenant's contractors and/or subcontractors for Landlord's approval, which approval shall not be unreasonably withheld conditioned or delayed.

(ii) Four complete sets of plans and specifications properly stamped by a registered architect or professional engineer and meeting the requirements in Section D below.

(iii) A properly executed building permit application form.

(iv) Four executed copies of the Insurance Requirements Agreement in the form attached to this Exhibit as Attachment II and made a part hereof from Tenant's contractor and, if requested by Landlord, from the contractor's subcontractors.

(v) Contractor's and subcontractor's insurance certificates, including an indemnity in accordance with the Insurance Requirements Agreement.

2. Landlord will return the following to Tenant:

(i) Two sets of plans approved or a disapproved with specific comments as to the reasons therefor (such approval or comments shall not constitute a waiver of approval of governmental authorities).

(ii) Two fully executed copies of the Insurance Requirements Agreement.

3. Landlord's approval of the plans, drawings, specifications or other submissions in respect of any Alterations shall create no liability or responsibility on the part of Landlord for their completeness, design sufficiency or compliance with requirements of any applicable laws, rules or regulations of any governmental or quasi-governmental agency, board or authority. Any plan or design approval rights reserved to or exercised by Landlord hereunder are for the sole and exclusive benefit of Landlord to ensure compatibility of such work with Building systems and Building standards, and such approval does not constitute any representation or warranty whatsoever as to the adequacy, correctness, efficiency or compliance with applicable Law of such plan or design or the work shown thereon and Landlord is expressly not reviewing Tenant's plans for such purposes.

4. Tenant shall obtain a building permit from the Building Department and necessary permits from other governmental agencies. Tenant shall be responsible for keeping current all permits. Tenant shall submit copies of all approved plans and permits to Landlord and shall post the original permit on the Premises prior to the commencement of any work.

C. Requirements and Procedures

1. All structural and floor loading requirements shall be subject to the prior approval of Landlord's structural engineer, such approval to be granted or withheld in accordance with **Section 5.3** of the Lease.

2. All mechanical (HVAC, plumbing and sprinkler) and electrical requirements shall be subject to the approval of Landlord's mechanical and electrical engineers, such approval to be granted or withheld in accordance with **Section 5.3** of the Lease, and all mechanical and electrical work shall be performed by contractors who are engaged by Landlord in constructing, operating or maintaining the Building. When necessary, Landlord will require engineering and shop drawings, which drawings must be approved by Landlord before work is started, such approval to be granted or withheld in accordance with **Section 5.3** of the Lease. Drawings are to be prepared by Tenant and all approvals shall be obtained by Tenant.

3. Elevator service for construction work shall be charged to Tenant at standard Building rates which will include the reasonable cost of operators and supervisory staff. Prior arrangements for elevator use shall be made at least 48 hours in advance with Building manager by Tenant. No material or equipment shall be carried under or on top of elevators. If an operating engineer or master mechanic is required by any union regulations, such engineer or master mechanic shall be paid for by Tenant.

4. If shutdown of risers and mains for electrical, HVAC, sprinkler and plumbing work is required, such work shall be supervised by Landlord's representative and shall be performed only at times approved by Landlord. No work will be performed in Building mechanical equipment rooms without Landlord's approval and under Landlord's supervision.

5. Tenant's contractor shall:

(i) have a superintendent or foreman on the Premises at all times;

(ii) police the job at all times, continually keeping the Premises orderly;

(iii) maintain cleanliness and protection of all areas, including elevators and lobbies.

(iv) protect the front and top of all peripheral HVAC units and thoroughly clean them at the completion of work;

(v) block off supply and return grills, diffusers and ducts to keep dust from entering into the Building air conditioning system; and

(vi) avoid disturbance of other tenants.

6. If Tenant's contractor is negligent in any of its responsibilities, Tenant shall be charged for corrective work.

7. All equipment and installations must be equal to the standards generally in effect with respect to the remainder of the Building. Any deviation from such standards will be permitted only if indicated or specified on the plans and specifications and approved by Landlord, such approval to be granted or withheld in accordance with **Section 5.3** of the Lease.

8. A properly executed air balancing report signed by a professional engineer shall be submitted to Landlord upon the completion of all HVAC work.

9. Upon completion of the Alterations, Tenant shall submit to Landlord a permanent certificate of occupancy and final approval by the other governmental agencies having jurisdiction.

10. Tenant shall submit to Landlord a final "as-built" set of drawings in Auto-CAD format and one set of blueprints showing all items of the Alterations in full detail.

11. Additional and differing provisions in the Lease, if any, will be applicable and will take precedence.

D. Standards for Plans and Specifications

Whenever Tenant shall be required by the terms of the Lease (including this Exhibit) to submit plans to Landlord in connection with any Alterations, such plans shall include at least the following:

1. Floor plan indicating location of partitions and doors (details required of partition and door types).

2. Location of standard electrical convenience outlets and telephone outlets.

3. Location and details of special electrical outlets; e.g., photocopiers, etc.

4. Reflected ceiling plan showing layout of standard ceiling and lighting fixtures. Partitions to be shown lightly with switches located indicating fixtures to be controlled.

5. Locations and details of special ceiling conditions, lighting fixtures, speakers, etc.

6. Location and specifications of floor covering, paint or paneling with paint colors referenced to standard color system.

7. Finish schedule plan indicating wall covering, paint, or paneling with paint colors referenced to standard color system.

8. Details and specifications of special millwork, glass partitions, rolling doors and grilles, blackboards, shelves, etc.

9. Hardware schedule indicating door number keyed to plan, size, hardware required including butts, latchsets or locksets, closures, stops, and any special items such as thresholds, soundproofing, etc. Keying schedule is required.

10. Verified dimensions of all built-in equipment (file cabinets, lockers, plan files,

etc.)

11. Location and weights of storage files.

12. Location of any special soundproofing requirements.

13. Location and details of special floor areas exceeding 50 pounds of live load per

square foot.

14. All structural, mechanical, plumbing and electrical drawings, to be prepared by the base building consulting engineers, necessary to complete the Premises in accordance with Tenant's Plans.

15. All drawings to be uniform size (30” x 46”) and shall incorporate the standard project electrical and plumbing symbols and be at a scale of 1/8” = 1’ or larger.

16. All drawings shall be submitted in hard-copy paper form (together with a PDF scanned copy of all paper drawings) and on disk in Auto-CAD Version 2000.

17. All drawings shall be stamped by an architect (or, where applicable, an engineer) licensed in the jurisdiction in which the Property is located and without limiting the foregoing, shall be sufficient in all respects for submission to applicable authorization in connection with a building permit application.

Attachment II to Exhibit G Contractor's Insurance Requirements

Building:

Landlord:

Tenant:

Premises:

The undersigned contractor or subcontractor ("**Contractor**") has been hired by the tenant named above (hereinafter called "**Tenant**") of the Building named above (or by Tenant's contractor) to perform certain work ("**Work**") for Tenant in the Premises identified above. Contractor and Tenant have requested the landlord named above ("**Landlord**") to grant Contractor access to the Building and its facilities in connection with the performance of the Work, and Landlord agrees to grant such access to Contractor upon and subject to the following terms and conditions:

1. Contractor agrees to indemnify and save harmless Landlord and its respective officers, employees and agents and their affiliates, subsidiaries and partners, and each of them, from and with respect to any claims, demands, suits, liabilities, losses and expenses, including reasonable attorneys' fees, arising out of or in connection with the Work (and/or imposed by law upon any or all of them) because of personal injuries, bodily injury (including death at any time resulting therefrom) and loss of or damage to property, including consequential damages, whether such injuries to person or property are claimed to be due to negligence of the Contractor, Tenant, Landlord or any other party entitled to be indemnified as aforesaid except to the extent specifically prohibited by law (and any such prohibition shall not void this Agreement but shall be applied only to the minimum extent required by law).

2. Contractor shall provide and maintain at its own expense, until completion of the Work, the following insurance:

(a) "Builder's All Risk" insurance in an amount at least equal to 100% of the replacement value of such Alterations.

(b) Workmen's Compensation and Employers Liability Insurance covering each and every workman employed in, about or upon the Work, as provided for in and in the amounts required by each and every statute applicable to Workmen's Compensation and Employers' Liability Insurance.

(c) Commercial General Liability Insurance including coverages for Protective and Contractual Liability (to specifically include coverage for the indemnification clause of this Agreement) for not less than the following limits:

Personal Injury: $5,000,000 per person
$10,000,000 per occurrence

Property Damage: $3,000,000 per occurrence

$3,000,000 general aggregate

(d) Commercial Automobile Liability Insurance (covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Work) for not less than the following limits:

Bodily Injury: $3,000,000 per person
$5,000,000 per occurrence

Property Damage: $1,000,000 per occurrence
$3,000,000 general aggregate

Contractor shall furnish a certificate from its insurance carrier or carriers to the Building office before commencing the Work, showing that it has complied with the above requirements regarding insurance and providing that the insurer will give Landlord ten (10) days' prior written notice of the cancellation of any of the foregoing policies.

3. Contractor shall require all of its subcontractors engaged in the Work to provide the following insurance:

(a) Workmen's Compensation and Employers Liability Insurance covering each and every workman employed in, about or upon the Work, as provided for in and in the amounts required by each and every statute applicable to Workmen's Compensation and Employers' Liability Insurance.

(b) Commercial General Liability Insurance including Protective and Contractual Liability coverages with limits of liability at least equal to the limits stated in paragraph 2(c).

(c) Commercial Automobile Liability Insurance (covering all owned, non-owned and/or hired motor vehicles to be used in connection with the Work) with limits of liability at least equal to the limits stated in paragraph 2(d).

Upon the request of Landlord, Contractor shall require all of its subcontractors engaged in the Work to execute an Insurance Requirements agreement in the same form as this Agreement.

Agreed to and executed this day of , 20 .

Contractor:

By:_ By:_

EXHIBIT H

Form of Letter of Credit IRREVOCABLE TRANSFERABLE

STANDBY LETTER OF CREDIT NUMBER ISSUING BANK:

PLACE AND DATE OF ISSUE: PLACE AND DATE OF EXPIRY: AT OUR COUNTERS

BENEFICIARY:

ATTN: __

APPLICANT:

UP TO AN AGGREGATE AMOUNT THEREOF: USD PARTIAL DRAWINGS:

PERMITTED
CREDIT AVAILABLE WITH:

ATTN: __

AGAINST PRESENTATION OF DOCUMENTS AS DETAILED HEREIN

DRAFTS: AT SIGHT
DRAWN ON: ____

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _ IN YOUR FAVOR FOR THE ACCOUNT OF ___ AVAILABLE FOR DRAWINGS FOR UP TO AN AGGREGATE AMOUNT OF USD

THIS LETTER OF CREDIT IS AVAILABLE BY PAYMENT UPON YOUR (OR YOUR TRANSFEREE'S) DRAFT(S) IN THE FORM OF ANNEX A HERETO, DRAWN AT SIGHT ON US AND PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF YOU (OR YOUR TRANSFEREE).

DOCUMENTS PRESENTED UNDER THIS LETTER OF CREDIT MAY BE SUBMITTED EITHER IN PERSON, BY RECOGNIZED OVERNIGHT DELIVERY SERVICE, OR UNITED STATES POSTAL SERVICE TO _ (UNLESS SENT BY FACSIMILE AS DESCRIBED BELOW)

DRAFTS PRESENTED WITH OUR __ OFFICE, AS LISTED HEREABOVE, SHALL BE PAYABLE IN IMMEDIATELY AVAILABLE FUNDS, WITH PAYMENT TO TAKE PLACE PRIOR TO THE END OF THE NEXT BANKING DAY IN MASSACHUSETTS FOLLOWING THE SUBMISSION DATE.

PRESENTATION WILL ALSO BE DEEMED MADE UPON OR RECEIPT OF YOUR TELECOPIER TRANSMISSION TO US AT FAC NO. (XXX) XXX-XXXX OF A FACSIMILE OF THE APPROPRIATE SIGHT DRAFT AND DRAWINGS CERTIFICATE PROPERLY COMPLETED AND SIGNED, TOGETHER WITH: (I) YOUR STATEMENT THAT YOU HAVE SENT TO US BY NATIONALLY RECOGNIZED OVERNIGHT COURIER (FREIGHT PREPAID), FOR RECEIPT TO OUR OFFICE LOCATED AT ____ ON THE FOLLOWING BUSINESS DAY, THE SIGNED ORIGINALS OF SUCH DOCUMENTS AND (II) YOUR TELEPHONE ADVICE TO US AT (XXX) XXX-XXXX (OR SUCH OTHER NUMBER AS WE SHALL SPECIFY TO YOU IN WRITING) OF YOUR SENDING OF THE ABOVE-DESCRIBED TELECOPIER TRANSMISSION. IN THE EVENT OF ANY DISCREPANCY ON SUCH ORIGINALS, THE DOCUMENTS SENT BY TELECOPIER TRANSMISSION UPON WHICH PAYMENT WAS MADE, SHALL BE CONSIDERED AS VALID.

DRAFTS SO PRESENTED VIA TELECOPIER TRANSMISSION ("FAX") SHALL BE PAYABLE IN IMMEDIATELY AVAILABLE FUNDS ON THE SAME BUSINESS DAY OF SUCH SUBMISSION PROVIDED THAT SUCH SUBMISSION IS MADE PRIOR TO 12:00 NOON ON ANY BUSINESS DAY, AND IF SUCH SUBMISSION IS MADE BETWEEN NOON AND 5:00 P.M. ON ANY BUSINESS DAY PAYMENT SHALL BE NO LATER THAN THE NEXT BUSINESS DAY FOLLOWING SUCH SUBMISSION.

THIS LETTER OF CREDIT EXPIRES AT OUR CLOSE OF BUSINESS ON THE EXPIRATION DATE AS STATED ABOVE, OR ANY AUTOMATICALLY EXTENDED EXPIRATION DATE AS HEREINAFTER SET FORTH.

DRAFTS MUST BE ACCOMPANIED BY:

THE ORIGINAL OF THIS LETTER OF CREDIT AND AMENDMENTS THERETO, IF ANY. IN THE EVENT OF A PARTIAL DRAWING WE WILL ENDORSE THE AMOUNT ON THE CREDIT AND RETURN THE ORIGINAL TO YOU VIA OVERNIGHT COURIER SERVICE.

A STATEMENT (SUCH STATEMENT, THE "DRAWING CERTIFICATE") PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF YOU (OR YOUR TRANSFEREE), IN THE FORM OF ANNEX B-1 OR B-2 HERETO, AS APPROPRIATE.

MULTIPLE AND PARTIAL DRAWS ARE PERMITTED.

THIS LETTER OF CREDIT SHALL INITIALLY EXPIRE ON ____, BUT SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE PERIODS OF ONE (1) YEAR ON THE PRESENT EXPIRATION DATE AND EACH SUCCESSIVE EXPIRATION DATE UNLESS AT LEAST NINETY (90) DAYS BEFORE THE THEN CURRENT EXPIRATION DATE WE NOTIFY YOU (OR YOUR TRANSFEREE) IN WRITING BY OVERNIGHT COURIER (NATIONALLY RECOGNIZED AND PROVIDING EVIDENCE OF DELIVERY) OR CERTIFIED/REGISTERED MAIL, RETURN RECEIPT REQUESTED THAT THIS LETTER OF CREDIT WILL NOT BE EXTENDED BEYOND THE THEN CURRENT EXPIRATION DATE. IN THE EVENT YOU (OR YOUR TRANSFEREE) ARE SO NOTIFIED, ANY UNUSED PORTION OF THE LETTER OF CREDIT SHALL BE AVAILABLE UPON PRESENTATION, PRIOR

TO THE THEN CURRENT EXPIRATION DATE, OF A SIGHT DRAFT AND A DRAWING CERTIFICATE, IN THE FORM OF ANNEX B-2 HERETO, PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF YOU (OR YOUR TRANSFEREE).

WE HEREBY ENGAGE WITH YOU TO HONOR DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS IRREVOCABLE STANDBY LETTER OF CREDIT UPON PRESENTATION TO US AS LISTED ABOVE.

EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO CONDITION OR QUALIFICATION. OUR OBLIGATION UNDER THIS LETTER OF CREDIT IS OUR INDIVIDUAL OBLIGATION, AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

THIS LETTER OF CREDIT SETS FORTH ALL OF THE TERMS AND CONDITIONS OF OUR OBLIGATION TO YOU AND SHALL NOT BE AMENDED OR MODIFIED EXCEPT BY WRITTEN INSTRUMENT DULY EXECUTED BY YOU AND US.

THIS LETTER OF CREDIT MAY BE TRANSFERRED, ONE OR MORE TIMES, IN ITS ENTIRETY BUT NOT IN PART, BY YOU OR ANY TRANSFEREE OF THIS LETTER OF CREDIT (A “TRANSFEREE”) AND ANY TRANSFEREE SHALL SUCCEED TO ALL OF THE RIGHTS HEREUNDER OF SUCH TRANSFEREE’S TRANSFEROR; PROVIDED, HOWEVER, THAT NO TRANSFER SHALL BE EFFECTIVE UNLESS (A) THE TRANSFEROR SHALL FIRST HAVE SUBMITTED TO US AN INSTRUCTION IN THE FORM OF THE SPECIMEN ATTACHED HERETO AS ANNEX C (THE “TRANSFER INSTRUCTIONS”) AND (B) NOTICE OF SUCH TRANSFER HAS BEEN ENDORSED HEREON BY US. UPON SUBMISSION TO US OF THE TRANSFER INSTRUCTIONS, WE WILL ENDORSE A NOTICE OF TRANSFER ON THIS LETTER OF CREDIT. THE LAST TRANSFEREE HEREOF, FROM TIME TO TIME, SHALL BE THE “TRANSFEREE” REFERENCED IN THE TEXT OF OTHER PARAGRAPHS OF THIS LETTER OF CREDIT. OUR TRANSFER FEE IN EFFECT WILL BE PAID BY THE APPLICANT, BUT SUCH PAYMENT SHALL NOT BE A CONDITION TO TRANSFER.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (ISP98) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 AND, TO THE EXTENT NOT INCONSISTENT THEREWITH, THE LAW OF THE STATE OF MASSACHUSETTS, INCLUDING THE MASSACHUSETTS UNIFORM COMMERCIAL CODE.

PLEASE ADDRESS ANY INQUIRIES OR CORRESPONDENCE ATTN: ___., QUOTING
OUR REF. NO.:
ATTN: __ TEL.: (XXX) XXX-XXXX SWIFT: XXXXX

AUTHORIZED SIGNATURE AUTHORIZED SIGNATURE

ANNEX A TO
LETTER OF CREDIT NO. _

SIGHT DRAFT

(DATE)

Pay to ___, U.S. ___ Dollars
(U.S. $_____) drawn under . Irrevocable Letter Of Credit No. _, by wiring such amount to:

TO: ____

By:_____ Name:__ Title:___

Annex B-1

DRAWING CERTIFICATE

(ISSUER) (DATE)

RE: Irrevocable Standby Letter of Credit No. ___ (the "Letter of Credit") Ladies & Gentlemen:

This drawing under the Letter of Credit is being made pursuant to that certain Agreement of Lease dated _____, now between ____ ("Landlord") and GOODWIN PROCTER LLP ("Tenant"), as the same may have been amended or otherwise modified (the "Lease").
The undersigned certifies to ("Issuer") the following:

1. Tenant is in default under the Lease and such default has continued beyond any applicable notice and cure period under said Lease or the landlord under the lease is otherwise permitted to draw on the Letter of Credit pursuant to the terms of the Lease.

2. The undersigned is the beneficiary under the Letter of Credit.

REQUEST FOR TRANSFER

DATE: __

RE: ____ STANDBY LETTER OF CREDIT NUMBER __

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

(NAME OF TRANSFEREE)

(STREET ADDRESS)

(CITY, STATE, COUNTRY)

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT IN ITS ENTIRETY.

WE FURTHER CERTIFY THAT THIS TRANSFEREE IS THE HOLDER OF THE LANDLORD'S INTEREST IN THE LEASE REFERENCED IN THE LETTER OF CREDIT.

PLEASE ADVISE THE TRANSFERRED LETTER OF CREDIT THROUGH, (IF APPLICABLE):

(ADVISING BANK)

(STREET ADDRESS)

(CITY, STATE, COUNTRY)

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE AND THE TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS TO ANY AMENDMENTS WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS AND WHETHER NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL LETTER OF CREDIT IS RETURNED HEREWITH TOGETHER WITH ANY AND ALL AMENDMENTS, AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE OF THE LETTER OF CREDIT AND FORWARD IT DIRECTLY TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

VERY TRULY YOURS, AUTHENTICATED

FOR_____ (BENEFICIARY CO'S NAME)

BY_____ (AUTHORIZED SIGNATURE)

SIGNATURE

(BANK’S SEAL REQUIRED)

BY_____ (BENEFICIARY’S BANK)

EXHIBIT I
Tenant's Removable Property

1. Tenant's personal property and all movable business and trade equipment owned or installed by Tenant or any party claiming by, through or under Tenant, not constituting Laboratory Reusable Installations.

Exhibit 31.1

CERTIFICATION

I, Elisabet de los Pinos, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Aura Biosciences, Inc;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

(a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) [Reserved]

(c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Aura Biosciences, Inc.

Date: August 11, 2022

By: /s/ Elisabet de los Pinos

Elisabet de los Pinos
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Julie Feder, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Aura Biosciences, Inc;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

(a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) [Reserved]

(c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Aura Biosciences, Inc.

Date: August 11, 2022

By: /s/ Julie Feder

Julie Feder
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Aura Biosciences, Inc. (the "Company") for the period ended June 30, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned certifies, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of her knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Aura Biosciences, Inc.

Date: August 11, 2022

By: /s/ Elisabet de los Pinos
Elisabet de los Pinos
President and Chief Executive Officer

Date: August 11, 2022

By: /s/ Julie Feder
Julie Feder
Chief Financial Officer