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# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 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, 2012**

**OR**

o **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: 001-35403**

# Verastem, Inc.

(Exact name of registrant as specified in its charter)

| **Delaware** | **27-3269467** |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification Number) |
| **215 First Street, Suite 440 Cambridge, MA** | **02142** |
| (Address of principal executive offices) | (Zip Code) |

**(617) 252-9300**
(Registrant's telephone number, including area code)

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 o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes ☒ No o

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

| Large accelerated filer o | Accelerated filer o | Non-accelerated filer ☒ (Do not check if a smaller reporting company) | Smaller reporting company o |
|---|---|---|---|

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

As of August 10, 2012 there were 21,251,128 shares of Common Stock, $0.0001 par value per share, outstanding.

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## FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, contained in this Quarterly Report on Form 10-Q, including statements regarding our strategy, future operations, future financial position, future revenues, projected costs, prospects, plans and objectives of management, are forward looking statements. The words "anticipate," "believe," "estimate," "expect," "intend," "may," "plan," "predict," "project," "target," "potential," "will," "would," "could," "should," "continue" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words.

Forward-looking statements are not guarantees of future performance and our actual results could differ materially from the results discussed in the forward-looking statements. Factors that could cause actual results to differ materially from those in the forward-looking statements include, but are not limited to, our ability to raise additional capital to support our clinical development program and other operations, our ability to develop products of commercial value and to identify, discover and obtain rights to additional potential product candidates, our ability to protect and maintain our intellectual property and the ability of our licensors to obtain and maintain patent protection for the technology or products that we license from them, the outcome of research and development activities, our reliance on third-parties, competitive developments, the effect of current and future legislation and regulation and regulatory actions, as well as other risks described more fully in the Company's Annual Report on Form 10-K and other filings with the SEC.

As a result of these and other factors, we may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

## PART I—FINANCIAL INFORMATION

**Item 1. Financial Statements (Unaudited).**

**Verastem, Inc.**

**(A development stage company)**

**CONDENSED BALANCE SHEETS**

**(unaudited)**

**(in thousands, except per share amounts)**

| | June 30, 2012 | December 31, 2011 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 15,751 | $ 20,954 |
| Short-term investments | 22,937 | 26,857 |
| Prepaid expenses and other current assets | 509 | 130 |
| Total current assets | 39,197 | 47,941 |
| Property and equipment, net | 782 | 709 |
| Long-term investments | 65,599 | 8,994 |
| Other assets | — | 1,307 |
| Restricted cash | 86 | 86 |
| Total assets | $ 105,664 | $ 59,037 |
| **Liabilities, redeemable convertible preferred stock and stockholders' equity (deficit)** | | |
| Current liabilities: | | |
| Accounts payable | $ 2,450 | $ 2,273 |
| Accrued expenses | 763 | 873 |
| Total current liabilities | 3,213 | 3,146 |
| Deferred rent | 57 | 74 |
| Liability for shares subject to repurchase | 25 | 36 |
| Obligation to issue warrant | — | 406 |
| Series A redeemable convertible preferred stock, $0.0001 par value; no shares and 16,000 shares authorized, issued and outstanding at June 30, 2012 and December 31, 2011, respectively | — | 15,939 |
| Series B redeemable convertible preferred stock, $0.0001 par value; no shares and 16,025 shares authorized, issued and outstanding at June 30, 2012 and December 31, 2011, respectively | — | 31,948 |
| Series C redeemable convertible preferred stock, $0.0001 par value; no shares and 9,068 shares authorized, issued and outstanding at June 30, 2012 and December 31, 2011, respectively | — | 20,254 |
| Stockholders' equity (deficit) | | |
| Preferred stock, $0.0001 par value; 5,000 shares authorized; none issued | — | — |
| Common stock, $0.0001 par value; 100,000 and 53,093 shares authorized at June 30, 2012 and December 31, 2011, respectively, 21,059 and 1,559 shares issued and outstanding at June 30, 2012 and December 31, 2011, respectively | 2 | 1 |
| Additional paid-in capital | 130,541 | 1,702 |
| Accumulated other comprehensive loss | (11) | (2) |
| Deficit accumulated during the development stage | (28,163) | (14,467) |
| Total stockholders' equity (deficit) | 102,369 | (12,766) |
| Total liabilities, redeemable convertible preferred stock and stockholders' equity (deficit) | $ 105,664 | $ 59,037 |

See accompanying notes.

**Verastem, Inc.**

**(A development stage company)**

**CONDENSED STATEMENTS OF COMPREHENSIVE LOSS**

**(unaudited)**

**(in thousands, except per share amounts)**

| | Three months ended, June 30, | | Six Months ended June 30, | | Period from August 4, 2010 (inception) to June 30, 2012 |
|---|---|---|---|---|---|
| | 2012 | 2011 | 2012 | 2011 | |
| Operating expenses: | | | | | |
| Research and development | $ 4,683 | $ 1,726 | $ 9,486 | $ 2,401 | $ 19,769 |
| General and administrative | 2,213 | 759 | 4,338 | 1,230 | 8,537 |
| Total operating expenses | 6,896 | 2,485 | 13,824 | 3,631 | 28,306 |
| Loss from operations | (6,896) | (2,485) | (13,824) | (3,631) | (28,306) |
| Interest income | 71 | — | 128 | — | 143 |
| Net loss | (6,825) | (2,485) | (13,696) | (3,631) | (28,163) |
| Accretion of preferred stock | — | (4) | (6) | (8) | (40) |
| Net loss applicable to common stockholders | $ (6,825) | $ (2,489) | $ (13,702) | $ (3,639) | $ (28,203) |
| Net loss per share applicable to common stockholders—basic and diluted | $ (0.34) | $ (2.03) | $ (0.79) | $ (3.14) | $ (5.20) |
| Weighted-average number of common shares used in net loss per share applicable to common stockholders—basic and diluted | 19,863 | 1,225 | 17,278 | 1,158 | 5,425 |
| Comprehensive loss | $ (6,791) | $ (2,485) | $ (13,705) | $ (3,631) | $ (28,174) |

See accompanying notes.

**Verastem, Inc.**

**(A development stage company)**

**CONDENSED STATEMENTS OF CASH FLOWS**

**(unaudited)**

**(in thousands)**

| | Six months ended June 30, | | Period from August 4, 2010 (inception) to June 30, 2012 |
|---|---|---|---|
| | 2012 | 2011 | |
| **Operating activities** | | | |
| Net loss | $ (13,696) | $ (3,631) | $ (28,163) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | | |
| Depreciation and amortization | 94 | 11 | 177 |
| Stock-based compensation expense | 3,012 | 91 | 4,699 |
| Common stock issued in exchange for license | — | — | 46 |
| Obligation to issue a warrant in exchange for license | — | — | 439 |
| Change in fair value of obligation to issue warrant | 431 | — | 398 |
| Changes in operating assets and liabilities: | | | |
| Prepaid expenses and other current assets | (379) | (79) | (509) |
| Other assets | — | (75) | — |
| Accounts payable | 177 | 934 | 2,450 |
| Accrued expenses and deferred rent | 420 | 1,720 | 820 |
| Net cash used in operating activities | (9,941) | (1,029) | (19,643) |
| **Investing activities** | | | |
| Purchases of property and equipment | (167) | (385) | (960) |
| Purchases of investments | (116,923) | — | (152,774) |
| Maturities of investments | 64,229 | — | 64,229 |
| Increase in restricted cash | — | (86) | (86) |
| Net cash used in investing activities | (52,861) | (471) | (89,591) |
| **Financing activities** | | | |
| Proceeds from issuance of redeemable convertible preferred stock | — | 12,000 | 68,107 |
| Net proceeds from the issuance of common stock and restricted common stock | 57,599 | 72 | 56,878 |
| Net cash provided by financing activities | 57,599 | 12,072 | 124,985 |
| Increase (decrease) in cash and cash equivalents | (5,203) | 10,572 | 15,751 |
| Cash and cash equivalents at beginning of period | 20,954 | 3,584 | — |
| Cash and cash equivalents at end of period | $ 15,751 | $ 14,156 | $ 15,571 |
| **Supplemental disclosure of non-cash financing activity** | | | |
| Accretion of redeemable convertible preferred stock to redemption value | $ 6 | $ 8 | $ 40 |
| Conversion of redeemable convertible preferred stock upon initial public offering | $ 68,148 | $ — | $ 68,148 |
| Reclassification of obligation to issue warrant from liabilities to equity | $ 837 | $ — | $ 837 |

See accompanying notes.

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS**

## 1. Summary of significant accounting policies

*Basis of presentation*

The accompanying unaudited condensed financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") for interim financial reporting and as required by Regulation S-X, Rule 10-01. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments, consisting only of normal and recurring adjustments, considered necessary for a fair presentation of the interim financial information have been included. When preparing financial statements in conformity with GAAP, the Company must make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures at the date of the financial statements. Actual results could differ from those estimates. Additionally, operating results for the three and six months ended June 30, 2012 are not necessarily indicative of the results that may be expected for any other interim period or for the fiscal year ending December 31, 2012. For further information, refer to the financial statements and footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2011 as filed with the Securities and Exchange Commission ("SEC") on March 30, 2012.

## 2. Fair value of financial instruments

The Company is required to disclose information on all assets and liabilities reported at fair value that enables an assessment of the inputs used in determining the reported fair values. The fair value hierarchy is now established that prioritizes valuation inputs based on the observable nature of those inputs. The fair value hierarchy applies only to the valuation inputs used in determining the reported fair value of the investments and is not a measure of the investment credit quality. The hierarchy defines three levels of valuation inputs:

| | |
|---|---|
| Level 1 inputs | Quoted prices in active markets for identical assets or liabilities |
| Level 2 inputs | Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly |
| Level 3 inputs | Unobservable inputs that reflect the Company's own assumptions about the assumptions market participants would use in pricing the asset or liability |

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**2. Fair value of financial instruments (Continued)**

The following table presents information about the Company's financial assets that have been measured at fair value at June 30, 2012 and indicates the fair value hierarchy of the valuation inputs utilized to determine such fair value (in thousands).

| Description | Total | Quoted prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
|---|---|---|---|---|
| **Financial assets** | | | | |
| Cash equivalents | $ 4,412 | $ 4,412 | $ — | $ — |
| Short-term investments | 22,937 | — | 22,937 | — |
| Long-term investments | 65,599 | — | 65,599 | — |
| **Total financial assets** | **$ 92,948** | **$ 4,412** | **$ 88,536** | **$ —** |

The following table presents information about the Company's financial assets and liabilities that have been measured at fair value at December 31, 2011 and indicates the fair value hierarchy of the valuation inputs utilized to determine such fair value (in thousands).

| Description | Total | Quoted prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
|---|---|---|---|---|
| **Financial assets** | | | | |
| Cash equivalents | $ 4,102 | $ 3,102 | $ 1,000 | $ — |
| Short-term investments | 26,857 | — | 26,857 | — |
| Long-term investments | 8,994 | — | 8,994 | — |
| **Total financial assets** | **$ 39,953** | **$ 3,102** | **$ 36,851** | **$ —** |
| **Financial liabilities** | | | | |
| Obligation to issue warrant | $ 406 | $ — | $ — | $ 406 |
| **Total financial liabilities** | **$ 406** | **$ —** | **$ —** | **$ 406** |

The Company's cash equivalents and investments are comprised of money market accounts, government-sponsored enterprise securities and commercial paper of publicly traded companies secured by the U.S. government. These investments have been initially valued at the transaction price and subsequently valued, at the end of each reporting period, utilizing third party pricing services or other market observable data. The pricing services utilize industry standard valuation models, including both income and market based approaches and observable market inputs to determine value. These observable market inputs include reportable trades, benchmark yields, credit spreads, broker/dealer quotes, bids, offers, current spot rates and other industry and economic events. The Company validates the prices provided by third party pricing services by reviewing their pricing methods and matrices, obtaining market values from other pricing sources, analyzing pricing data in certain instances and confirming that the relevant markets are active. After completing its validation procedures, the

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**2. Fair value of financial instruments (Continued)**

Company did not adjust or override any fair value measurements provided by the pricing services as of June 30, 2012 or December 31, 2011.

In connection with the license with Poniard Pharmaceuticals Inc., the Company is obligated to issue a warrant to Poniard for the purchase of the Company's common stock upon the first patient dosing using a product licensed under the agreement with Poniard; such warrant will have a three year term from the date of issuance. Prior to an initial public offering, the exercise price of the warrant would have been equal to the fair value of the common stock on the date of the most recent preferred stock financing prior to the issuance of the warrant. Upon the completion of the Company's initial public offering in January 2012, the exercise price of the warrant will be equal to the average closing price of the Company's common stock during the five trading days preceding the issuance of the warrant.

Prior to January 2012, the obligation to issue the warrant is a level 3 liability because its value measurement is based, in part, on significant inputs not observed in the market and reflects the Company's assumptions as to the expected warrant exercise price and the expected volatility of the Company's common stock. The obligation to issue the warrant was initially recorded at fair value and, prior to the Company's initial public offering, was revalued at the end of each reporting period, with the change in the fair value reported in research and development expense within the statement of operations. Upon the completion of the Company's initial public offering, the obligation to issue the warrant met the definition of an equity-classified derivative instrument since the remaining variable inputs were consistent with those in a fixed for fixed forward option agreement, and was therefore revalued as of January 26, 2012 with the change in fair value reported in research and development expense within the statement of operations. The fair value of the obligation to issue the warrant was then reclassified from liabilities to additional paid-in-capital on the Company's balance sheet. The Company will reassess the equity classification of the obligation to issue the warrant upon a change in facts and circumstances in future reporting periods.

As of December 31, 2011, the most recent issuance of the Company's preferred stock had been the issuance of the Series C Preferred Stock in November 2011. The Company estimated the value of the obligation to issue the warrant using a probability-weighted scenario analysis that incorporated the probability of the completion of an initial public offering. The analysis included estimating the stock price on each measurement date assuming that achievement of the milestone would be 100% probable. The estimated stock price contingent upon milestone achievement was determined by analyzing the

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**2. Fair value of financial instruments (Continued)**

post-announcement returns for public companies that progressed to Phase 1 clinical trials. The following inputs were used to determine the fair value of the obligation to issue the warrant:

| | | December 31, 2011 | |
|---|---|---|---|
| | January 26, 2012 | Non-IPO | IPO |
| Exercise price | $ 11.09 | $ 6.86 | $ 10.00 |
| Estimated stock price contingent upon milestone achievement | $ 12.60 | $ 3.22 | $ 8.54 |
| Expected term | 4.0 years | 4.1 years | 4.1 years |
| Volatility | 75% | 70% | 70% |
| Dividend yield | 0.00% | 0.00% | 0.00% |
| Risk-free rate | 0.54% | 0.60% | 0.60% |
| Probability of achieving milestone | 80% | 80% | 80% |
| Probability of scenario | 100% | 20% | 80% |

As of December 31, 2011, the fair value of the obligation to issue the warrant was recorded at $406,000. As a result of the change in inputs to the valuation model, the fair value of the obligation to issue the warrant increased by $431,000 to $837,000 at January 26, 2012. Reasonable changes in the assumptions used to calculate the fair value of the obligation to issue the warrant would not result in significant changes in the fair value.

**3. Investments**

The Company's investments are classified as available-for-sale pursuant to Accounting Standards Codification (ASC) 320, *Investments—Debt and Equity Securities*. The Company classifies investments available to fund current operations as current assets on its balance sheets. Investments are classified as long-term assets on the balance sheets if (i) the Company has the intent and ability to hold the investments for a period of at least one year and (ii) the contractual maturity date of the investments is greater than one year.

Investments are carried at fair value with unrealized gains and losses included as a component of accumulated other comprehensive loss, until such gains and losses are realized. If a decline in the fair value is considered other-than-temporary, based on available evidence, the unrealized loss is transferred from other comprehensive loss to the statement of operations. There were no charges taken for other-than-temporary declines in fair value of short-term or long-term investments during the three and six months ended June 30, 2012 and 2011. Realized gains and losses are included in interest income in the statement of operations. There were no realized gains or losses recognized during the three and six months ended June 30, 2012 or 2011. The Company utilizes the specific identification method as a basis to determine the cost of securities sold.

The Company reviews investments for other-than-temporary impairment whenever the fair value of an investment is less than the amortized cost and evidence indicates that an investment's carrying amount is not recoverable within a reasonable period of time. To determine whether an impairment is other-than-temporary, the Company considers the intent to sell, or whether it is more likely than not that the Company will be required to sell, the investment before recovery of the investment's amortized cost basis. Evidence considered in this assessment includes reasons for the impairment, compliance with

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**3. Investments (Continued)**

the Company's investment policy, the severity and the duration of the impairment and changes in value subsequent to year end. As of June 30, 2012, there were no investments with a fair value that was significantly lower than the amortized cost basis or any investments that had been in an unrealized loss position for a significant period.

Cash, cash equivalents and investments at June 30, 2012 and December 31, 2011 consist of the following (in thousands):

| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
|---|---|---|---|---|
| **June 30, 2012** | | | | |
| Cash and cash equivalents: | | | | |
| Cash and money market accounts | $ 15,751 | $ — | $ — | $ 15,751 |
| Investments: | | | | |
| Government-sponsored enterprise securities (due within 1 year) | $ 17,912 | $ — | $ (6) | $ 17,906 |
| Government-sponsored enterprise securities (due within 1 - 2 years) | 65,603 | 19 | (23) | 65,599 |
| Commercial paper secured by the U.S. government (due within 1 year) | 5,032 | — | (1) | 5,031 |
| Total investments | $ 88,547 | $ 19 | $ (30) | $ 88,536 |
| Total cash, cash equivalents, and investments | $ 104,298 | $ 19 | $ (30) | $ 104,287 |

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**3. Investments (Continued)**

| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
|---|---|---|---|---|
| **December 31, 2011** | | | | |
| Cash and cash equivalents: | | | | |
| Cash and money market accounts | $ 19,954 | $ — | $ — | $ 19,954 |
| Government-sponsored enterprise securities | 1,000 | — | — | 1,000 |
| Total cash and cash equivalents | $ 20,954 | $ — | $ — | $ 20,954 |
| Investments: | | | | |
| Government-sponsored enterprise securities (due within 1 year) | $ 10,900 | $ 2 | $ (1) | $ 10,901 |
| Government-sponsored enterprise securities (due within 1 - 2 years) | 8,998 | 1 | (5) | 8,994 |
| Commercial paper secured by the U.S. government (due within 1 year) | 15,954 | 3 | (1) | 15,956 |
| Total investments | $ 35,852 | $ 6 | $ (7) | $ 35,851 |
| Total cash, cash equivalents, and investments | $ 56,806 | $ 6 | $ (7) | $ 56,805 |

**4. Prepaid expenses and other current assets**

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

| | June 30, 2012 | December 31, 2011 |
|---|---|---|
| Prepaid insurance | $ 207 | $ — |
| Prepaid other expense | 169 | 77 |
| Interest receivable | 133 | 53 |
| | $ 509 | $ 130 |

**5. Accrued expenses**

Accrued expenses consist of the following (in thousands):

| | June 30, 2012 | December 31, 2011 |
|---|---|---|
| Compensation and related benefits | $ 496 | $ 86 |
| Professional fees | 133 | 520 |
| Contract research organizations | 63 | 217 |
| Other expenses | 39 | 23 |
| Deferred rent | 32 | 27 |
| | $ 763 | $ 873 |

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**6. Net loss per share**

Basic and diluted net loss per common share is calculated by dividing net loss applicable to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration for common stock equivalents. The Company's potentially dilutive shares, which include redeemable convertible preferred stock, outstanding stock options, unvested restricted stock and restricted stock units, are considered to be common stock equivalents and are only included in the calculation of diluted net loss per share when their effect is dilutive. The following table reconciles net loss to net loss applicable to common shareholders (in thousands, except per share data):

| | Three Months ended | | Six Months ended | | Period from August 4, 2010 (inception) to June 30, 2012 |
|---|---|---|---|---|---|
| | June 30, 2012 | June 30, 2011 | June 30, 2012 | June 30, 2011 | |
| Net loss | $ (6,825) | $ (2,485) | $ (13,696) | $ (3,631) | $ (28,163) |
| Accretion of redeemable convertible preferred stock | — | (4) | (6) | (8) | (40) |
| Net loss applicable to common stockholders | $ (6,825) | $ (2,489) | $ (13,702) | $ (3,639) | $ (28,203) |
| Weighted-average number of common shares used in net loss per share applicable to common stockholders—basic and diluted | 19,863 | 1,225 | 17,278 | 1,158 | 5,425 |
| Net loss per share applicable to common stockholders—basic and diluted | $ (0.34) | $ (2.03) | $ (0.79) | $ (3.14) | $ (5.20) |

The following potentially dilutive securities were excluded from the calculation of diluted net loss per share due to their anti-dilutive effect (in thousands):

| | Three Months ended | | Six Months ended | | Period from August 4, 2010 (inception) to June 30, 2012 |
|---|---|---|---|---|---|
| | June 30, 2012 | June 30, 2011 | June 30, 2012 | June 30, 2011 | |
| Preferred stock | — | 4,571 | — | 4,571 | — |
| Outstanding stock options | 495 | 284 | 495 | 284 | 495 |
| Unvested restricted stock | 1,143 | 1,831 | 1,143 | 1,831 | 1,143 |
| Unvested restricted stock units | 598 | — | 598 | — | 598 |

**7. Redeemable convertible preferred stock**

In November 2010, the Company sold 4 million shares of Series A redeemable convertible preferred stock (Series A Preferred Stock) at a price of $1.00 per share for gross proceeds of $4 million. In accordance with the terms of the Series A Stock Purchase Agreement, the Company sold an additional 12 million shares at $1.00 per share in a second subsequent closing when the milestones necessary to achieve the subsequent closing were met in April 2011. The Company incurred approximately $79,000 of issuance costs as part of the first closing of the Series A Preferred Stock. No additional issuance costs were incurred as part of the second closing.

In July 2011, the Company sold approximately 16 million shares of series B redeemable convertible preferred stock (Series B Preferred Stock) at a price of $2.00 per share for gross proceeds of

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**7. Redeemable convertible preferred stock (Continued)**

approximately $32 million. The Company incurred approximately $113,000 of issuance costs as part of the closing of the Series B Preferred Stock.

In November 2011, the Company sold approximately 9.1 million shares of Series C redeemable convertible preferred stock (Series C Preferred Stock) at a price of $2.25 per share for gross proceeds of $20.4 million. The Company incurred approximately $153,000 of issuance costs as part of the closing of the Series C Preferred Stock. The issuance costs associated with the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock (collectively, the Preferred Stock) were accreted through the earliest redemption date.

In connection with the Company's initial public offering, as discussed below, all shares of the Company's Preferred Stock were converted into 11,740,794 shares of common stock.

**8. Common stock**

***Reverse Stock Split***

In January 2012, the Company's board of directors and stockholders approved a one-for-3.5 reverse stock split of the Company's common stock. The reverse stock split became effective on January 10, 2012. All share and per share amounts in the financial statements have been retroactively adjusted for all periods presented to give effect to the reverse stock split, including reclassifying an amount equal to the reduction in par value to additional paid-in capital.

***Initial Public Offering***

In February 2012, the Company closed the initial public offering (IPO) of its common stock pursuant to a registration statement on Form S-1, as amended. An aggregate of 6,325,000 shares of common stock registered under the registration statement were sold at a public offering price of $10.00 per share, including the over-allotment option. Net proceeds of the IPO were $56.8 million.

**9. Stock-based compensation**

In December 2011, the Company adopted the 2012 Incentive Plan (the 2012 Plan). The 2012 Plan became effective upon the closing of the Company's IPO in February 2012. The 2012 Plan provides for the grant of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock awards, restricted stock units and other stock-based and cash awards. Upon effectiveness, the number of shares of common stock that are reserved under the 2012 Plan is the sum of 3,428,571 shares plus the number of shares that remained available under the 2010 Plan. The number of shares reserved under the 2012 Plan is increased by the number of shares of common stock (up to a maximum of 571,242 shares) subject to outstanding awards under the 2010 Plan that expire, terminate or are otherwise surrendered, cancelled, forfeited or repurchased. The 2012 Plan includes an "evergreen provision" that allows for an annual increase in the number of shares of common stock available for issuance under the 2012 Plan. The annual increase will be added on the first day of each year beginning in 2013 and each subsequent anniversary until the expiration of the 2012 Plan, equal to the lowest of 1,285,714 shares of common stock, 4.0% of the number of shares of common stock outstanding and an amount determined by the board of directors.

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**9. Stock-based compensation (Continued)**

**Restricted stock**

A summary of the Company's unvested restricted stock as of June 30, 2012 and changes during the six months ended June 30, 2012 is as follows (in thousands, except per share data):

| | Shares | Weighted-average purchase price per share |
|---|---|---|
| Unvested at December 31, 2011 | 1,435 | $ 0.025 |
| Vested | (292) | 0.039 |
| Unvested at June 30, 2012 | 1,143 | $ 0.022 |

As of June 30, 2012, there was $7.7 million of total unrecognized stock-based compensation expense related to unvested restricted stock. The expense is expected to be recognized over a weighted average period 2.3 years.

A summary of the Company's unvested restricted stock units (RSUs) as of June 30, 2012 and changes during the six months ended June 30, 2012 is as follows (in thousands, except per share data):

| | Shares | Weighted-average grant date fair value |
|---|---|---|
| Unvested at December 31, 2011 | — | $ — |
| Granted | 600 | 11.10 |
| Cancelled | (2) | 11.10 |
| Unvested at June 30, 2012 | 598 | $ 11.10 |

As of June 30, 2012, there was $5.9 million of total unrecognized stock-based compensation expense related to unvested RSUs granted under the 2012 Plan. The expense is expected to be recognized over a weighted-average period of 3.6 years.

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**9. Stock-based compensation (Continued)**

**Stock options**

A summary of the Company's stock option activity and related information follows (in thousands, except per share data):

| | Shares | Weighted-average price per share | Weighted-average remaining contractual term (years) | Aggregate intrinsic value |
|---|---|---|---|---|
| Outstanding at December 31, 2011 | 405 | $ 0.75 | 9.9 | $ 176 |
| Granted | 91 | 10.91 | | |
| Cancelled | (1) | 1.93 | | |
| Outstanding at June 30, 2012 | 495 | $ 2.63 | 9.0 | $ 3,608 |
| Exercisable at June 30, 2012 | 117 | $ 2.05 | 8.8 | $ 917 |
| Vested and expected to vest at June 30, 2012 | 495 | $ 2.63 | 9.0 | $ 3,608 |

The fair value of each stock-based award is estimated on the grant date using the Black-Scholes option-pricing model using the following assumptions:

| | Six Months ended June 30, | |
|---|---|---|
| | 2012 | 2011 |
| Risk-free interest rate | 0.8 - 2.7% | 1.9 - 2.7% |
| Dividend yield | — | — |
| Volatility | 69 - 72% | 69% |
| Expected term (years) | 5.3 - 6.1 | 6.1 |

**10. Significant Transactions**

On May 11, 2012, the Company acquired from S*Bio Pte Ltd, or S*Bio, compounds identified as dual inhibitors of PI3K and mTOR, including related patent rights. PI3K and mTOR are members of a network of proteins, or signaling pathway, that promotes cancer cell proliferation and survival. Under the agreement, the Company paid S*Bio an upfront fee of $350,000 and has agreed to pay S*Bio milestone payments of up to an aggregate of approximately $21.0 million upon the achievement of specified development and regulatory milestones. In addition, the Company agreed to pay to S*Bio tiered, low to mid single digit royalties as a percentage of annual net sales of each product containing an acquired compound as an ingredient. The obligation to pay royalties continues on a product by product and country by country basis until the expiration of all acquired patent rights covering the product in such country. If the Company obtains a license from a third party in order to commercialize an acquired compound contained in a product in a particular country, then the Company may deduct up to 50% of the amount paid to such third party from the royalty payments that Company owes to S*Bio for such product. The deduction is subject to specified limitations, including that in no event will any such deduction reduce a royalty payment owed to S*Bio by more than 50% as a result of all such deductions in the aggregate. There were no ongoing clinical trials at the time of the acquisition of the

**Verastem, Inc.**

**(A development stage company)**

**NOTES TO CONDENSED FINANCIAL STATEMENTS (Continued)**

**10. Significant Transactions (Continued)**

compounds, and the compounds acquired do not have alternative future uses, nor have they reached a stage of technological feasibility. As no process or activities were acquired, the transaction was accounted for as an asset acquisition by recording the $350,000 payment made to S*Bio to research and development expense in the three months ended June 30, 2012.

**11. Subsequent Events**

In preparing the financial statements included in this Form 10-Q, the Company has evaluated all subsequent events that occurred after June 30, 2012 through the date of the filing of this Form 10-Q. On July 11, 2012, the Company entered into a license agreement with Pfizer Inc., or Pfizer, under which Pfizer granted the Company worldwide, exclusive rights to research, develop, manufacture and commercialize products containing certain of Pfizer's inhibitors of focal adhesion kinase (the "Products") for all therapeutic, diagnostic and prophylactic uses in humans. The Company is solely responsible, at its own expense, for the clinical development of the Products, which is to be conducted in accordance with an agreed-upon development plan. The Company is also responsible for all manufacturing and commercialization activities at its own expense. Pfizer is required to provide the Company with an initial quantity of clinical supply of one of the Products for an agreed upon price. Under the agreement, the Company made a one-time cash payment to Pfizer in the amount of $1.5 million and issued to Pfizer 192,012 shares of the Company's common stock. Pfizer is also eligible to receive up to $2 million in developmental milestones and up to an additional $125 million based on the successful attainment of regulatory and commercial sales milestones. Pfizer is also eligible to receive high single to mid double digit royalties on future net sales of Products. The Company's royalty obligations with respect to each Product in each country begin on the date of first commercial sale of the Product in that country, and end on the later of 10 years after the date of first commercial sale of the Product in that country or the date of expiration or abandonment of the last claim contained in any issued patent or patent application licensed by Pfizer to the Company that covers the Product in that country. The Company did not have any other material recognizable or unrecognizable subsequent events during this period.

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

*You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and related notes appearing elsewhere in this quarterly report. The following discussion contains forward-looking statements that involve risks and uncertainties. Our actual results and the timing of certain events could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including those discussed below and elsewhere in this quarterly report or in our annual report on Form 10-K.*

**OVERVIEW**

We are a biopharmaceutical company focused on discovering and developing proprietary small molecule drugs targeting cancer stem cells in breast and other cancers along with proprietary companion diagnostics. A cancer stem cell is a particularly aggressive type of tumor cell, resistant to conventional cancer therapy, that we believe is an underlying cause of tumor recurrence and metastasis. Our scientific co-founders, Robert Weinberg, Ph.D., Eric Lander, Ph.D., and Piyush Gupta, Ph.D. made discoveries on the underlying biology of cancer stem cells. We are building on these discoveries to identify and develop small molecule compounds that target cancer stem cells.

We commenced active operations in the second half of 2010. Our operations to date have been limited to organizing and staffing our company, business planning, raising capital, acquiring and developing our technology, identifying potential product candidates and undertaking preclinical studies of our most advanced product candidates. To date, we have not generated any revenues and have financed our operations with net proceeds from the private placement of our preferred stock and our initial public offering. In February 2012, we completed an initial public offering of 6,325,000 shares of our common stock at a public offering price of $10.00 per share and received net proceeds of approximately $56.8 million, after deducting underwriting discounts and commissions and offering expenses.

As of June 30, 2012, we had a deficit accumulated during the development stage of $28.2 million. We had net losses of $13.7 million, $3.6 million and $28.2 million for the six months ended June 30, 2012 and 2011 and for the period from August 4, 2010 (inception) to June 30, 2012. We expect to incur significant expenses and increasing operating losses for the foreseeable future. We expect our expenses to increase in connection with our ongoing activities, particularly as we continue the research and development and later initiate clinical trials of, and seek marketing approval for, our product candidates. In addition, if we obtain marketing approval for any of our product candidates, we expect to incur significant commercialization expenses related to product sales, marketing, manufacturing and distribution. Furthermore, 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. Adequate additional financing may not be available to us on acceptable terms, or at all. If we are unable to raise capital when needed or on attractive terms, we would be forced to delay, reduce or eliminate our research and development programs or any future commercialization efforts. We expect our existing cash, cash equivalents and investments will enable us to fund our current operating plan and capital expenditure requirements into late 2015 or early 2016. This is based on our current estimates, and we could use our available capital resources sooner than we currently expect. We will need to generate significant revenues to achieve profitability, and we may never do so.

**CRITICAL ACCOUNTING POLICIES AND SIGNIFICANT JUDGMENTS AND ESTIMATES**

We believe that several accounting policies are important to understanding our historical and future performance. We refer to these policies as "critical" because these specific areas generally require us to make judgments and estimates about matters that are uncertain at the time we make the estimate, and different estimates—which also would have been reasonable—could have been used, which would have resulted in different financial results.

The critical accounting policies we identified in our most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2011 related to accrued research and development expenses and stock-based compensation. There were no changes to these critical accounting policies in the three or six months ended June 30, 2012. It is important that the discussion of our operating results that follows be read in conjunction with the critical accounting policies disclosed in our Annual Report on Form 10-K, as filed with the SEC on March 30, 2012.

The Company has elected to follow the extended transition period guidance provided for in Securities Act Section 7(a)(2)(B) for complying with new or revised accounting standards. The Company will disclose the date on which adoption of such standards is required for non-emerging growth companies and the date on which the Company will adopt the recently issued accounting standards.

**RESULTS OF OPERATIONS**

**Comparison of the Three Months ended June 30, 2012 and 2011**

*Research and development expense.* Research and development expense for the three months ended June 30, 2012 (2012 Quarter) was $4.7 million compared to $1.7 million for the three months ended June 30, 2011 (2011 Quarter). The $3.0 million increase from the 2011 Quarter to the 2012 Quarter is primarily related to an increase of $1.2 million for personnel costs, including stock-based compensation of $751,000, primarily due to increased headcount and a higher fair value of our common stock, an increase of $1.1 million in contract research organization expense for outsourced biology, chemistry and development services, an increase of $365,000 in license fee expense primarily related to the upfront payment for the Asset Purchase Agreement with S*Bio Pte Ltd. (S*Bio) and an increase of $201,000 for laboratory supplies.

*General and administrative expense.* General and administrative expense for the 2012 Quarter was $2.2 million compared to $759,000 for the 2011 Quarter. The $1.4 million increase from the 2011 Quarter to the 2012 Quarter principally resulted from an increase of $874,000 for personnel costs, including stock-based compensation of $696,000, primarily due to a higher fair value of our common stock, an increase of $318,000 in professional fees primarily related to additional legal and accounting fees for being a publicly traded company, an increase of $100,000 in insurance costs primarily related to being a publicly traded company and an increase of $99,000 in consulting fees.

*Interest income.* Interest income increased to $71,000 for the 2012 Quarter from none for the 2011 Quarter. During the 2011 Quarter, our cash was deposited in non-interest bearing accounts.

*Accretion of preferred stock.* We did not record accretion in the 2012 Quarter due to our initial public offering and the related conversion of all preferred stock into common stock in February 2012 compared to $4,000 in the 2011 Quarter reflecting the periodic accretion of issuance costs associated with our series A preferred stock.

**Comparison of the Six Months ended June 30, 2012 and June 30, 2011**

*Research and development expense.* Research and development expense for the six months ended June 30, 2012 (2012 Period) was $9.5 million compared to $2.4 million for the six months ended June 30, 2011 (2011 Period). The $7.1 million increase from the 2011 Period to the 2012 Period is primarily related to an increase of $2.6 million for personnel costs, including stock-based compensation of $1.6 million, primarily due to increased headcount and a higher fair value of our common stock, an increase of $2.5 million in contract research organization expense for outsourced biology, chemistry and development services, an increase of $847,000 in license fee expense primarily related to the revaluation of the obligation to issue the warrant to Poniard Pharmaceuticals through January 2012 and the upfront payment for the Asset Purchase Agreement with S*Bio, an increase of $517,000 for laboratory supplies,

an increase of $259,000 for consulting fees and an increase of $227,000 in occupancy and depreciation due to costs of a new facility in May 2011.

*General and administrative expense.* General and administrative expense for the 2012 Period was $4.3 million compared to $1.2 million for the 2011 Period. The $3.1 million increase from the 2011 Period to the 2012 Period principally resulted from an increase of $1.8 million for personnel costs, including stock-based compensation of $1.3 million, primarily due to higher fair value of our common stock, an increase of $591,000 in professional fees primarily related to additional legal and accounting fees for being a publicly traded company, an increase of $255,000 in consulting fees and an increase of $196,000 in insurance costs primarily related to being a publicly traded company.

*Interest income.* Interest income increased to $128,000 for the 2012 Period from none for the 2011 Period. During the 2011 Period, our cash was deposited in non-interest bearing accounts.

*Accretion of preferred stock.* We recorded $6,000 of accretion in the 2012 Period reflecting the periodic accretion of issuance costs associated with our series A, series B and Series C preferred stock from December 31, 2011 through the date of our initial public offering and conversion of all outstanding shares of preferred stock into common stock upon consummation of our initial public offering compared to $8,000 in the 2011 Period reflecting the periodic accretion of issuance costs associated with our series A preferred stock.

## LIQUIDITY AND CAPITAL RESOURCES

### Sources of liquidity

To date, we have not generated any revenues. Since our inception in August 2010, we have financed our operations principally through private placements and through our initial public offering, which we completed in February 2012. As of June 30, 2012, we had $104.3 million in cash, cash equivalents, and investments. We primarily invest our cash equivalents and investments in a U.S. Treasury money market fund, government-sponsored enterprise securities and commercial paper.

### Cash flows

*Operating activities.* The use of cash in all periods resulted primarily from our net losses adjusted for non-cash charges and favorable changes in the components of working capital. The significant increase in cash used in operating activities for the 2012 Period compared to the 2011 Period is due to an increase in research and development expenses as we increased our research and development headcount and increased spending on external research and development costs.

*Investing activities.* The cash used in investing activities for the 2012 Period reflects the net purchases of investments of $52.9 million and the purchase of $167,000 of property and equipment. For the 2011 Period, cash used in investing activities reflects the purchase of $385,000 of property and equipment.

*Financing activities.* The cash provided by financing activities in the 2012 Period reflects the $56.8 million of net proceeds from our initial public offering less issuance costs paid in prior periods. The cash provided in the 2011 Period reflects $12.0 million of net proceeds from the sale and issuance of shares of our Series A preferred stock.

### Funding requirements

We expect our existing cash, cash equivalents and investments will enable us to fund our current operating plan and capital expenditure requirements into late 2015 or early 2016.

## OFF-BALANCE SHEET ARRANGEMENTS

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined under Securities and Exchange Commission rules.

**Item 3. Quantitative and Qualitative Disclosures about Market Risk.**

We are exposed to market risk related to changes in interest rates. We had cash, cash equivalents and investments of $104.3 million as of June 30, 2012, consisting of cash, U.S. Treasury money market fund, government-sponsored enterprise securities and commercial paper. Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of U.S. interest rates, particularly because most of our investments are in securities guaranteed by the U.S. government. Our available-for-sale securities are subject to interest rate risk and will fall in value if market interest rates increase. Due to the short-term duration most of our investment portfolio and the low risk profile of our investments, an immediate 100 basis point change in interest rates would not have a material effect on the fair market value of our portfolio.

We contract with CROs and contract manufacturers globally. We may be subject to fluctuations in foreign currency rates in connection with these agreements. Transactions denominated in currencies other than the functional currency are recorded based on exchange rates at the time such transactions arise. As of June 30, 2012, approximately $34,000 of our total liabilities were denominated in currencies other than the functional currency.

**Item 4. Controls and Procedures.**

**Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer and Chief Operating Officer, evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2012. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate 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. Based on the evaluation of our disclosure controls and procedures as of June 30, 2012, our Chief Executive Officer and Chief Operating Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

**Changes in Internal Control over Financial Reporting**

No change in our internal control over financial reporting occurred during the fiscal quarter ended June 30, 2012 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings.

None.

### Item 1A. Risk Factors.

There have been no material changes to the risk factors included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2011.

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

**RECENT SALES OF UNREGISTERED SECURITIES**

Set forth below is information regarding securities sold by us during the six months ended June 30, 2012, that were not registered under the Securities Act of 1933, as amended, or the Securities Act. Also included is the consideration, if any, received by us for the securities and information relating to the section of the Securities Act, or rule of the Securities and Exchange Commission, under which exemption from registration was claimed.

*Issuances of securities*

None.

*Stock option and other equity awards*

None.

**PURCHASE OF EQUITY SECURITIES**

None.

**USE OF PROCEEDS FROM REGISTERED SECURITIES**

In February 2012, we completed an initial public offering of 6,325,000 shares of our common stock at a public offering price of $10.00 per share for an aggregate offering price of $63.3 million. The offer and sale of all of the shares in the offering were registered under the Securities Act pursuant to a registration statement on Form S-1 (File No. 333-177677), which was declared effective by the SEC on January 26, 2012, and a registration statement on Form S-1 (File No. 333-179910) filed pursuant to Rule 462(b) of the Securities Act.

As of June 30, 2012, we have used approximately $9.7 million of the net proceeds primarily to fund the preclinical development of VS-507, VS-4718 and VS-5095, to advance and expand the research and preclinical development of additional product candidates and companion diagnostics and for working capital, capital expenditures and other general corporate purposes. We have not used any of the net proceeds from the offering to make payments, directly or indirectly, to any director or officer of ours, or any of their associates, to any person owning 10 percent or more of our common stock or to any affiliate of ours. We have invested the balance of the net proceeds from the offering in a variety of capital preservation investments, including short-term, investment grade, interest bearing instruments and U.S. government securities. There has been no material change in our planned use of the balance of the net proceeds from the offering as described in our final prospectus filed with the SEC pursuant to Rule 424(b) under the Securities Act.

**Item 5. Other Information.**

On July 11, 2012, we entered into a license agreement with Pfizer Inc., or Pfizer, under which Pfizer granted us worldwide, exclusive rights to research, develop, manufacture and commercialize products containing certain of Pfizer's inhibitors of focal adhesion kinase (the "Products") for all therapeutic, diagnostic and prophylactic uses in humans. We are solely responsible, at our own expense, for the clinical development of the Products, which is to be conducted in accordance with an agreed-upon development plan. We are also responsible for all manufacturing and commercialization activities at our own expense. Pfizer is required to provide us with an initial quantity of clinical supply of one of the Products for an agreed upon price. Under the agreement, we made a one-time cash payment to Pfizer in the amount of $1.5 million and issued to Pfizer 192,012 shares of our common stock. Pfizer is also eligible to receive up to $2 million in developmental milestones and up to an additional $125 million based on the successful attainment of regulatory and commercial sales milestones. Pfizer is also eligible to receive high single to mid double digit royalties on future net sales of Products. Our royalty obligations with respect to each Product in each country begin on the date of first commercial sale of the Product in that country, and end on the later of 10 years after the date of first commercial sale of the Product in that country or the date of expiration or abandonment of the last claim contained in any issued patent or patent application licensed by Pfizer to us that covers the Product in that country.

**Item 6. Exhibits.**

The exhibits filed as part of this Quarterly Report on Form 10-Q are set forth on the Exhibit Index, which Exhibit Index is incorporated herein by reference.

**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.

**VERASTEM, INC.**

Date: August 13, 2012 By: /s/ CHRISTOPH WESTPHAL, M.D., PH.D.

Christoph Westphal, M.D., Ph.D.
*President and Chief Executive Officer*
*(Principal executive officer)*

Date: August 13, 2012 By: /s/ ROBERT FORRESTER

Robert Forrester
*Chief Operating Officer*
*(Principal financial and accounting officer)*

**EXHIBIT INDEX**

| | |
|---|---|
| 4.1 | Registration Rights Agreement, dated as of July 11, 2012, by and between the Company and Pfizer Inc. Previously filed as Exhibit 4.1 to the Company's Current Report on Form 8-K filed on July 11, 2012 (File No. 001-35403) and incorporated herein by reference. |
| 10.1 | Asset Purchase Agreement, dated as of May 10, 2012, by and between the Company and S*Bio Pte Ltd.* |
| 10.2 | License Agreement, dated as of July 11, 2012, by and between the Company and Pfizer Inc.* |
| 31.1 | Certification of Chief Executive Officer pursuant to Rules 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2 | Certification of Chief Financial Officer pursuant to Rules 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.1 | Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 32.2 | Certification of Chief 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† | XBRL Instance Document |
| 101.SCH† | XBRL Taxonomy Extension Schema Document |
| 101.CAL† | XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.DEF† | XBRL Taxonomy Extension Definition Linkbase Document |
| 101.LAB† | XBRL Taxonomy Extension Label Linkbase Document |

* Portions of this exhibit have been omitted pursuant to a request for confidential treatment filed with the SEC.

† Submitted electronically herewith.

In accordance with Rule 406T of Regulation S-T, the XBRL related information in Exhibit 101 to this Quarterly Report on Form 10-Q is deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act, is deemed not filed for purposes of Section 18 of the Exchange Act, and otherwise is not subject to liability under these sections.

**Exhibit 10.1**

**[**]** = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

EXECUTION VERSION

**ASSET PURCHASE AGREEMENT**

**Between**

**VERASTEM, INC.**

**and**

**S*BIO PTE LTD.**

**Dated as of May 10, 2012**

**TABLE OF CONTENTS**

This Asset Purchase Agreement (this "Agreement") is entered into as of May 10, 2012, by and between Verastem, Inc., a Delaware corporation ("Buyer"), and S*Bio Pte Ltd, a company organized under the laws of Singapore ("Seller").

INTRODUCTION

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, certain assets of Seller and its Subsidiaries upon the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained in this Agreement, the parties hereto agree as follows:

ARTICLE I

Purchase and Sale of Acquired Assets

SECTION 1.01 The Acquisition. On the terms and subject to the conditions of this Agreement, at the Closing Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, all the right, title and interest, as of the Closing, of Seller and any of its Subsidiaries in, to and under the Acquired Assets, free and clear of all Liens, for (a) an aggregate upfront payment of $350,000 (the "Upfront Payment"), payable as set forth in Section 2.02(c), (b) the contingent right to potentially receive the Contingent Consideration, on the terms and subject to the conditions set forth in Section 1.04, and (c) the assumption of the Assumed Liabilities (the "Purchase Price"). The purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities are referred to in this Agreement as the "Acquisition".

SECTION 1.02 Acquired Assets and Excluded Assets.

(a) The term "Acquired Assets" means the following:

(i) all of the Acquired Compounds;

(ii) all Acquired Patents, all inventions claimed therein, and all Program Know-How, including all copyrights in the Program Know-How and all tangible embodiments of Program Know-How (collectively the "Assigned Intellectual Property"), and the right to sue and collect damages related thereto for past, present and future infringement of any of the foregoing;

(iii) all Patent Files with respect to the Acquired Patents (the "Acquired Patent Files");

(iv) all laboratory notebooks or portions thereof, to the extent relating to the Acquired Compounds (or true and complete copies thereof) (such notebooks or portions, the "Acquired Notebooks");



(v) all of Seller's and any of its Subsidiaries' inventory of [**] and any other Acquired Compounds as of the Closing Date (the "Acquired Inventory"); and

(vi) all rights and claims to the extent relating to the items described in paragraphs (i) through (v) of this Section 1.02(a) or to any Assumed Liability, and all Guarantees, warranties, indemnities and similar rights in favor of Seller to the extent related to any such Acquired Asset or any Assumed Liability.

(b) The term "Excluded Assets" means:

(i) all assets and properties of Seller or its Subsidiaries of whatever kind and nature not specifically described in Section 1.02(a);

(ii) all rights of Seller under this Agreement and the Ancillary Agreements;

(iii) all cash, cash equivalents, accounts receivable, marketable securities and intercompany accounts receivable of the Seller;

(iv) all minute books, stock books, Tax returns and similar corporate records of the Seller;

(v) all assets (including Intellectual Property) of the Seller used in the Seller's other businesses and programs, including Seller's [**], other than the Acquired Assets;

(vi) all rights under insurance policies, including all claims, refunds and credits due or to become due under such policies; and

(vii) any refund of Taxes of the Seller attributable to any taxable period (or portion thereof) that ends on or before the Closing Date.

SECTION 1.03 Assumption of Certain Liabilities.

(a) Upon the terms and subject to the conditions of this Agreement, Buyer shall assume, effective as of the Closing, and from and after the Closing Buyer shall pay, perform and discharge, all of the following obligations and liabilities of the Seller, whether express or implied, liquidated, absolute, accrued, matured, unmatured, contingent or otherwise, known or unknown (the "Assumed Liabilities"):

(i) all liabilities and obligations arising out of or relating to the ownership or use of the Acquired Assets, in each case relating to or arising from any fact, circumstance, occurrence, condition, act or omission existing (x) on or occurring prior to the Closing (except, in each case, to the extent arising out of or relating to (A) any breach by Seller or any of its Subsidiaries of, or nonperformance by Seller or any of its Subsidiaries under, any Contract prior to the Closing, or (B) any violation of Law by



Seller or any of its Subsidiaries prior to the Closing) or (y) following the Closing, other than due to a breach by Seller under this Agreement;

(ii) all liabilities and obligations for Taxes (x) related to the Acquired Assets or the operation of the Acquired Assets that are attributable to any taxable period (or portion thereof) beginning after the Closing Date or (y) which are the responsibility of Buyer under Section 5.07; and

(iii) any other liabilities or obligations which the Buyer specifically assumes pursuant to the terms of this Agreement.

(b) Notwithstanding any other provision of this Agreement or any Ancillary Agreement to the contrary, and regardless of any disclosure to Buyer, Buyer shall not assume or be liable for any liability, obligation or commitment of Seller or any of its Subsidiaries of any kind (whether express or implied, liquidated, absolute, accrued, matured, unmatured, contingent or otherwise (including any liability, obligation or commitment based on any theory of successor liability) or known or unknown) other than the Assumed Liabilities (the "Excluded Liabilities"). The Excluded Liabilities, which shall be retained and paid, performed and discharged when due by Seller, include the following:

(i) any liability, obligation or commitment of Seller or any of its Subsidiaries that relates to, or that arises from, any Excluded Asset, or that arises from the distribution to or ownership by Seller or any of its Subsidiaries of any Excluded Asset, or that is associated with the realization of the benefits of any Excluded Asset, whether accruing prior to, at or after the Closing;

(ii) any liability, obligation or commitment of Seller or any of its Subsidiaries relating to or arising from any actual or alleged breach by Seller or any of its Subsidiaries of, or nonperformance by Seller or any of its Subsidiaries under, any Contract prior to the Closing;

(iii) (A) any Taxes of Seller, (B) any Taxes related to the Acquired Assets that were incurred in or are attributable to any taxable period (or portion thereof) ending on or before the Closing Date, (C) any Taxes of another person for which Seller is liable, including Taxes for which Seller is liable by reason of Treasury Regulations Section 1.1502-6 (or any comparable or similar provision of U.S. federal, state, local, Singapore or other Law), being a transferee or successor, any contractual obligation or otherwise, and (D) any income, withholding, transfer, sales, use or other Taxes arising in connection with the consummation of the transactions contemplated by this Agreement (including any income or withholding Taxes arising as a result of the transfer by Seller to Buyer of the Acquired Assets);

(iv) any liability, obligation or commitment for fees and expenses incurred by Seller or any of its Subsidiaries (including the fees and expenses of legal counsel, and fees and expenses of any accountant, auditor, broker, financial advisor or consultant retained by or on behalf of Seller or any of its Subsidiaries) arising from or in



connection with this Agreement or the Ancillary Agreements or the transactions contemplated hereby or thereby;

(v) any liability, obligation or commitment of Seller or any of its Subsidiaries to any of their respective Affiliates;

(vi) any Indebtedness of Seller or any of its Subsidiaries;

(vii) any liability, obligation or commitment of Seller or any of its Subsidiaries relating to (A) the employment or termination of employment (including termination in connection with the transactions contemplated hereby) with Seller or any of its Subsidiaries of any current or former director, officer, employee, contractor or consultant of Seller or any of its Affiliates or (B) any Benefit Plan or Benefit Agreement; and

(viii) any Controlled Group Liability with respect to Seller or any Commonly Controlled Entity.

(c) Seller shall take all actions necessary to ensure that Buyer shall acquire the Acquired Assets free and clear of all liabilities, obligations and commitments of Seller and its Subsidiaries, other than the Assumed Liabilities, and free and clear of all Liens.

SECTION 1.04 Contingent Consideration.

(a) Milestone Contingent Payments.

(i) Buyer shall pay Seller the Milestone Contingent Payment below after the first achievement of the associated Milestone Event below by any Selling Person:

| **"Milestone Event"** | **"Milestone Contingent Payment"** |
|---|---|
| (A) [**] | $ [**] |
| (B) [**] | $ [**] |
| (C) [**] | $ [**] |
| (D) [**] | $ [**] |
| (E) [**] | $ [**] |



| **"Milestone Event"** | **"Milestone Contingent Payment"** |
|---|---|
| (F) [**] | $ [**] |
| (G) [**] | $ [**] |
| (H) [**] | $ [**] |
| (I) [**] | $ [**] |

For the sake of clarity, each Milestone Contingent Payment is payable only once with respect to the first achievement of the relevant Milestone Event. In no event shall all Milestone Contingent Payments, in the aggregate, total more than $20,950,000.

(ii) The relevant Milestone Contingent Payment shall be payable as follows:

(A) within [**] Business Days after achievement of the corresponding Milestone Event, if such Milestone Event is first achieved by Buyer or any of its Affiliates; or

(B) within [**] days after achievement of the corresponding Milestone Event, if such Milestone Event is first achieved by a Selling Person other than Buyer or any of its Affiliates.

(b) Sales-Based Contingent Payments.

(i) Subject to Sections 1.04(b)(ii) and 1.04(b)(iii), Buyer shall pay Seller the following tiered Sales-Based Contingent Payments on Annual Net Sales of each Product, on a Product-by-Product basis, in each calendar year at the incremental rates set forth below:

| **Annual Net Sales Tiers:** | **"Sales-Based Contingent Payments"** |
|---|---|

| | |
|---|---|
| The portion of Annual Net Sales which is less than or equal to $[**] | [**]% of such portion of Annual Net Sales |
| The portion of Annual Net Sales which is greater than $[**], but less than or equal to $[**] | [**]% of such portion of Annual Net Sales |



| **Annual Net Sales Tiers:** | **"Sales-Based Contingent Payments"** |
|---|---|
| The portion of Annual Net Sales which is greater than $[**] | [**]% of such portion of Annual Net Sales |

(ii) Sales-Based Contingent Payment Period. Sales-Based Contingent Payments shall be payable with respect to Net Sales of a Product in a country during the applicable Sales-Based Contingent Payment Period for such Product in such country. Buyer shall pay the relevant Sales-Based Contingent Payment within [**] days after the end of each Calendar Quarter during the applicable Sales-Based Contingent Payment Period; provided, however, that, to the extent that any Sales-Based Contingent Payment is due based on Annual Net Sales by a Selling Person other than Buyer or any of its Affiliates, Buyer may pay the relevant portion of such Sales-Based Contingent Payment within [**] days after the end of the relevant Calendar Quarter during the applicable Sales-Based Contingent Payment Period.

(iii) Required Third Party Payments. If a Selling Person obtains a license under any Patent Right owned or controlled by a third party (other than another Selling Person) that would, in the absence of such license, be infringed by the manufacture, use, sale, offer for sale or importation of the Acquired Compound contained in a Product in a country (but excluding any such Patent Right which covers only the formulation or method of manufacture of such Acquired Compound), then fifty percent (50%) of the royalties actually paid to such third party with respect to sales of such Product in such country (such fifty percent (50%) portion, the "Stacking Payments") may be deducted from the Sales-Based Contingent Payments due to Seller with respect to such Product in such country; provided, however, that in no event shall the Sales-Based Contingent Payments due pursuant to Section 1.04(b)(i) (subject to Section 1.04(b)(ii)) in any Calendar Quarter be reduced by more than fifty percent (50%) as a result of any and all such Stacking Payments in the aggregate. In the event that the Selling Persons may not fully deduct the Stacking Payments as a result of the proviso in the immediately preceding sentence, the Selling Persons may carry forward any remaining portion of the Stacking Payments to be credited to future Calendar Quarters, subject, in each future Calendar Quarter, to the proviso in the immediately preceding sentence.

(c) Payment Satisfaction.

(i) The obligation of Buyer to pay the Contingent Consideration hereunder may be satisfied by any of Buyer, any of its Affiliates or any Selling Person; provided, however, that, except as provided in Section 1.04(c)(iii), Buyer shall remain liable on a primary basis for such payment obligations.

(ii) All Contingent Consideration shall be paid in Dollars by wire transfer to an account designated in advance by Seller.



(iii) Buyer shall not assign, convey or transfer Buyer's rights in all or substantially all the Acquired Assets and all of Buyer's rights and obligations under this Agreement, following the Closing Date, to any Person, unless either:

(A) this Agreement is concurrently assigned in its entirety to such Person (whether by operation of Law or otherwise) such that Seller is in privity of contract with such Person, in which case, following notice thereof to Seller, Buyer shall have no further obligations under this Agreement and such Person shall be deemed to be the "Buyer" hereunder; or

(B) such Person has expressly assumed the obligation to pay all Contingent Payments when due and the obligation to perform every other duty and covenant of Buyer under this Agreement, provided that Buyer shall remain liable for the payment of all Contingent Payments when due and the performance of every duty and covenant of Buyer under this Agreement.

For the sake of clarity, the foregoing shall not apply to any license by Buyer of rights under any or all of the Acquired Assets.

(d) Diligence. From and after the Effective Date, Buyer shall, and shall cause each Selling Person with rights to a Product to, use Commercially Reasonable Efforts to achieve the Milestone Events that have then not been achieved as to which such rights are applicable and, during the term of any Sales-Based Contingent Payment Period with respect to an Product in a country, to commercialize such Product in such country.

(e) Reporting.

(i) Buyer shall provide Seller, by March 31st of each calendar year, with written summaries of the efforts of the Selling Persons to achieve each of the Milestone Events with respect to which the relevant Milestone Contingent Payment has not yet been paid. Within [**] days after receipt of such summary, if the Seller requests a meeting with representatives of Buyer to discuss such report, Buyer shall use its commercially reasonable efforts to make available for such a meeting (which meeting shall be by teleconference for a reasonable period of time) a reasonable number of those of its employees and representatives as are responsible for the applicable activities set forth in such summaries. In no event shall Buyer be required to make any such employees or representatives available for more than [**] per calendar year. In no event shall Buyer or any such employee or representative be required to disclose to Seller any information not otherwise required to be disclosed by Buyer pursuant to this Agreement and Seller shall retain all such information in confidence in accordance with Section 5.01.

(ii) Buyer shall provide written notice to Seller of the first achievement of any of the Milestone Events as follows:

(A) within [**] Business Days after achievement of such Milestone Event, if such Milestone Event is first achieved by Buyer or any of its Affiliates; or

(B) within [**] days after achievement of such Milestone Event, if such Milestone Event is first achieved by a Selling Person other than Buyer or any of its Affiliates.

(iii) During the Sales-Based Contingent Payment Period, Buyer shall deliver to Seller, within [**] days after the end of each Calendar Quarter, a written report indicating, on a Product-by-Product and country-by-country basis, gross sales and Net Sales, the calculation of Sales-Based Contingent Payments with respect thereto (including deductions, itemized by major category) and the prices and the number of units of Product sold, each determined in accordance with GAAP; provided, however, that if, under the agreement between Buyer or its Affiliate and any Selling Person other than Buyer or its Affiliates, such Selling Party is not obligated to disclose to Buyer or its Affiliate all of the items of information listed above, then Buyer's obligation shall be to provide Seller with the same information that such Selling Person provides to Buyer or its Affiliate. Such amounts shall be expressed in Dollars, and such reports shall include the rates of exchange used to convert to Dollars from the currency in which such sales were made or payments received.

(iv) During the Contingent Payment Period and for [**] years thereafter, Buyer shall, and shall cause each of the other Selling Persons to, keep such complete and accurate books and records as may be reasonably necessary to ascertain the amounts of any Contingent Consideration owed hereunder. This Section 1.04 does not require Buyer or any other Selling Person to maintain any such record for more than [**] calendar years.

(v) During the Contingent Payment Period and for [**] years thereafter, upon the written request of Seller, Buyer shall permit an independent public accountant (an "Accountant") selected by Seller, reasonably satisfactory to Buyer and subject to reasonable confidentiality obligations to Buyer, to have reasonable access upon reasonable prior notice and during normal business hours, but no more than [**] during any calendar year, to review Buyer's financial records specified in Section 1.04(e)(iv) for the purpose of determining the accuracy of the reports described in Sections 1.04(e)(i), (ii) or (iii) (an "Audit"). In addition, Buyer shall either (A) require each other Selling Person to permit an Accountant selected by Seller, reasonably satisfactory to Buyer and such Selling Person and subject to reasonable confidentiality obligations to such Selling Person, to have reasonable access during the Contingent Payment Period and for [**] thereafter, upon reasonable prior notice and during normal business hours, upon the written request of Seller but no more than [**] during any calendar year, to review such Selling Person's financial records specified in Section 1.04(e)(iv) for the purpose of conducting an Audit, or (B) upon the written request of Seller but no more than [**] during any calendar year, conduct, or have an Accountant selected by Buyer, reasonably satisfactory to Seller and such Selling Person and subject to reasonable confidentiality obligations to such Selling Person, conduct an Audit upon reasonable prior notice and during normal business hours of such Selling Person, to review such Selling Person's financial records specified in Section 1.04(e)(iv) for the purpose of conducting an Audit. Seller shall have no right to obtain any books or records of any Selling Person. The Accountant's report of any Audit shall be provided concurrently to Seller and Buyer. A



Selling Person's financial records shall not be subject to audit more than [**] by Seller, unless after an accounting period has been audited by Seller, such Selling Person restates its financial results for such accounting period, in which event Seller may conduct [**] of such records in accordance with this Section 1.04(e)(v). Buyer or Seller shall, if necessary, promptly pay to the other party any amount underpaid or overpaid, respectively, as reflected in the results of such Audit. Seller shall bear (and with respect to any Audit described in clause (B) above, reimburse Buyer within [**] days after receipt of an invoice for) the full cost of such Audit, unless such Audit discloses an underpayment by Buyer of five percent (5%) or more of the amount of Sales-Based Contingent Payments due under this Agreement in any calendar year covered by such Audit, in which case Buyer shall bear the full cost of Seller's reasonable out-of-pocket expenses for such Audit.

(f) Payment Period. The obligations of Buyer with respect to the Milestone Events and Milestone Contingent Payments, including the obligations under Sections 1.04(d) with respect to the Milestone Events and the obligations under Sections 1.04(e)(i) and 1.04(e)(ii), shall terminate on expiration of the Contingent Payment Period, if not earlier satisfied.

(g) Overdue Payments. Any Contingent Payment not paid when due shall bear interest from the due date until the date of payment thereof at the rate of the one-month London Interbank Offered Rate ("LIBOR") as quoted in The Wall Street Journal (or if it no longer exists, a similarly authoritative source) plus three hundred (300) basis points; provided, that interest shall not accrue at a rate that exceeds the maximum rate permitted by applicable law. The payment of such interest shall not limit Seller from exercising any other rights it may have as a consequence of the lateness of any payment.

(h) Payment in US Dollars. All payments hereunder shall be payable in U.S. dollars. With respect to each Calendar Quarter, for countries other than the United States, whenever conversion of payments from any foreign currency shall be required, such conversion shall be made at the rate of exchange used throughout the accounting system of the Selling Person for such Calendar Quarter.

SECTION 1.05 Withholding. Buyer will be entitled to deduct and withhold from the amounts otherwise payable by it pursuant to this Agreement to any Person, such amounts as it is legally required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax Law, and to collect any necessary Tax forms, including Forms W-8 or W-9, as applicable, or any similar information, from Seller and any other recipients of payments hereunder and shall timely pay such Taxes to the proper Tax authority and send proof of payment to Seller within [**] days following such payments. In the event that any amount is so deducted and withheld, and properly remitted, such amount will be treated for all purposes of this Agreement as having been paid to the Person to whom the payment from which such amount was withheld was made.



## ARTICLE II

## The Closing

SECTION 2.01 Closing. The closing of the Acquisition (the "Closing") shall take place at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109, USA, at 10:00 a.m. Boston time immediately following the execution and delivery of this Agreement by

Buyer and Seller. The date on which the Closing occurs is referred to in this Agreement as the "Closing Date".

SECTION 2.02 Transactions to be Effected at the Closing. The parties hereby acknowledge and agree that the following actions have been taken or are being taken concurrently with the Closing and as a condition thereof, in each case in the form and pursuant to the method as Buyer shall reasonably specify:

(a) Acquired Assets. The transfer, sale, conveyance and assignment of the Acquired Assets shall be effectuated by the execution and delivery at the Closing by Buyer and Seller of one or more bills of sale and one or more patent assignment documents (including a patent assignment in the form attached as Exhibit A), together with any reasonably necessary declarations or other filings, and such other instruments of transfer, conveyance and assignment as may be required under applicable Law or as Buyer shall reasonably request to vest in Buyer good and valid title to the Acquired Assets, in form and substance reasonably acceptable to Seller and Buyer (all such documents that are executed and delivered by Seller in connection with the Closing, the "Ancillary Agreements").

(i) On the Closing Date, Seller shall instruct Seller's patent counsel in writing that Buyer is the sole owner of the Acquired Patents and the Acquired Patent Files held by Seller's patent counsel and that Seller's patent counsel should henceforth take instructions in respect of the Acquired Patents and the Acquired Patent Files solely from Buyer.

(ii) As promptly as practicable, and in any event within [**], following the Closing, Seller shall deliver to Buyer, at such address as Buyer specifies in writing to Seller at Closing, copies of those portions of Seller's and any of its Subsidiaries' chemistry and biology laboratory notebooks that constitute part of the Acquired Notebooks, at Buyer's expense for shipping and handling costs.

(iii) On or within [**] following the Closing, Seller shall ship the Acquired Inventory to Buyer at such address as Buyer specifies in writing to Seller at Closing, at Buyer's expense for shipping and handling costs.

(iv) Except as set forth above regarding Acquired Patent Files and Acquired Notebooks, on or promptly after Closing, Seller shall also deliver to Buyer, at such address as Buyer specifies in writing to Seller at Closing, any electronic files and original documents (or, if no originals exist and Seller or its Subsidiaries only have copies thereof, such copies) that, in each case, are within the Acquired Assets, at Buyer's expense for shipping and handling costs.



(b) Assumed Liabilities. Seller shall assign and transfer to Buyer, and Buyer shall assume, the Assumed Liabilities by the execution and delivery at the Closing by Buyer and Seller of one or more Ancillary Agreements; provided that the terms of such instruments shall not result in an increase in the obligations of Buyer beyond those expressly set forth in this Agreement.

(c) Payment of Upfront Payment. Buyer shall deliver in cash, by wire transfer to Seller, an amount equal to the Upfront Payment.

## ARTICLE III

## Representations and Warranties of Seller

Except as set forth in the disclosure schedule (with specific references to the section of this Agreement to which the information stated in such disclosure relates) delivered by Seller to Buyer (the "Disclosure Schedule"), Seller hereby represents and warrants to Buyer as follows:

SECTION 3.01 Organization, Standing and Power. Seller and each of its Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized. Seller and each of its Subsidiaries has all requisite corporate power and authority and possesses all governmental franchises, licenses, permits, authorizations and approvals necessary to enable it to own, lease or otherwise hold and operate its properties and assets and to carry on its business as presently conducted. Seller has delivered to Buyer true and complete copies of its charter, by-laws and other organizational documents, in each case as amended through the date of this Agreement. There is no predecessor entity of Seller or any of its Subsidiaries, and neither Seller nor any of its Subsidiaries is the surviving entity resulting from any merger.

SECTION 3.02 Authority; Execution and Delivery; Enforceability. Seller has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party, to consummate the Acquisition and the other transactions contemplated hereby and thereby and to comply with the provisions hereof and thereof. The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which it is a party, the consummation by Seller of the Acquisition and the other transactions contemplated hereby and thereby and the compliance by Seller with the provisions hereof and thereof have been duly authorized by all necessary corporate action. The Board of Directors has declared that it is in the commercial interests of the Seller to enter into the Acquisition and approved the Acquisition and the terms of, and the transactions contemplated by, this Agreement. Seller has duly executed and delivered this Agreement and each Ancillary Agreement to which it is a party, and, assuming the due authorization, execution and delivery by Buyer, this Agreement and the Ancillary Agreements to which Seller is a party constitute its legal, valid and binding obligation, enforceable against it in accordance with their terms, except to the extent that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and to general equitable principles.

SECTION 3.03 No Conflicts; Consents. The execution and delivery by Seller of this Agreement and each Ancillary Agreement to which it is a party, the consummation of the



Acquisition and the other transactions contemplated hereby and thereby and compliance by Seller with the terms hereof and thereof do not and will not conflict with, or result in any violation or breach of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancelation or acceleration of any obligation or to loss of a benefit under, or to increased, additional, accelerated or guaranteed rights or entitlements of any other Person under, or result in the creation of any Lien upon any of the Acquired Assets under, (a) any provision of the charter or by-laws of Seller or any of its Subsidiaries, (b) any Contract to which Seller or any of its Subsidiaries is a party or by which any of the Acquired Assets are bound or (c) any injunction,

judgment, order, decree or ruling ("Judgment") or statute, law (including common law), ordinance, rule or regulation ("Law") applicable to Seller or any of its Subsidiaries or any of their respective properties or assets (including any Acquired Asset). No consent, approval, license, permit, order or authorization ("Consent") of, or registration, declaration or filing with, any Federal, state or local, domestic or foreign, government or any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign (a "Governmental Entity") is required to be obtained or made by or with respect to Seller or any of its Subsidiaries in connection with the execution and delivery of this Agreement or any Ancillary Agreement, the consummation of the Acquisition or the other transactions contemplated hereby or thereby (alone or in combination with any other event) or the compliance with the provisions hereof or thereof.

SECTION 3.04 Contracts.

(a) Neither Seller nor any of its Subsidiaries is a party to or bound by:

(i) a Contract granting a Lien upon any Acquired Asset;

(ii) a Contract containing a covenant not to compete or other similar restriction that may limit, in any respect, the use of any Acquired Asset by Buyer after Closing;

(iii) a Contract containing any provisions (A) prohibiting or imposing any restrictions on the assignment of all or any portion of the Acquired Assets to Buyer or (B) having the effect of providing that the consummation of any of the transactions contemplated by this Agreement or the Ancillary Agreements (alone or in combination with any other event) or the execution and delivery of this Agreement or the Ancillary Agreements (alone or in combination with any other event) will conflict with, result in a violation or breach of, or constitute a default under (with or without notice or lapse of time, or both), such Contract or give rise under such Contract to any right of, or result in, a termination, right of first refusal, amendment, revocation, cancelation or acceleration, or loss of benefit, or the creation of any Lien in or upon any of the Acquired Assets, or to any increased, guaranteed, accelerated or additional rights or entitlements of any Person; or

(iv) a Contract other than as set forth above that restricts the use or operation of the Acquired Assets.



SECTION 3.05 Title to Assets. Other than Assigned Intellectual Property that is covered by Section 3.07, as of the Closing Date (but prior to giving effect to the Closing), Seller has good, valid and marketable title to the Acquired Assets free and clear of all mortgages, liens, security interests, charges, easements, leases, subleases, covenants, rights of first refusal, options, claims, restrictions or encumbrances of any kind (collectively, "Liens"), other than Permitted Encumbrances.

SECTION 3.06 Compliance with Laws; Permits.

(a) Seller and its Subsidiaries are currently operating and have been and are in compliance with all Laws and Judgments applicable to the conduct or operation of Seller's business related to the Acquired Assets. Neither Seller nor any of its Subsidiaries has received a notice or other written communication alleging a possible violation of any Law or Judgment applicable to the Acquired Assets. No approvals, authorizations, certificates, filings, franchises, licenses, notices and permits of or with any Governmental Entities ("Permits") are necessary for the conduct of Seller's business related to the Acquired Assets as currently conducted.

(b) Seller and its Subsidiaries have, and to Seller's Knowledge, any contractors to Seller or its Subsidiaries have, developed, tested, manufactured, stored and disposed of, as applicable, the Acquired Compounds in compliance with applicable Law, including, where applicable, those requirements relating to the FDA's, EMA's, MHLW's and any other Governmental Entity's current good laboratory practices.

(c) Neither Seller nor any of its Subsidiaries has ever (i) imported for sale, exported for sale, marketed for sale, sold, offered for sale, distributed for sale, processed for sale, packaged for sale or otherwise commercialized any Acquired Compounds, or (ii) conducted, or had conducted on their behalf, any clinical trials of any Acquired Compounds.

(d) Neither Seller nor any of its Subsidiaries nor any of their respective employees or consultants, in their capacity as employees or consultants of Seller or any of its Subsidiaries, has made an untrue or fraudulent statement to the FDA or any other applicable Governmental Entity, or in any records and documentation prepared or maintained to comply with applicable Laws, with respect to any Acquired Compound, or failed to disclose a material fact required to be disclosed to the FDA or any other similar Governmental Entity with respect to any Acquired Compound.

(e) Neither Seller nor any of its Subsidiaries nor any of their respective employees or consultants, in their capacity as employees or consultants of Seller or any of its Subsidiaries, has been debarred, excluded or received notice of action or threat of action with respect to debarment, exclusion or other action under the provisions of 21 U.S.C. §§ 335a, 335b, or 335c, 42 U.S.C. § 1320a-7 or any equivalent provisions in any other applicable jurisdiction. Neither Seller, any of its Subsidiaries nor any of the employees or consultants to Seller or any of its Subsidiaries, in their capacity as employees or consultants of Seller or any of its Subsidiaries, nor to Seller's Knowledge, any contractor to Seller or any of its Subsidiaries, in its capacity as a contractor to the Seller or any of its Subsidiaries, has received written notice of or been subject to any other material enforcement action involving the FDA or any other similar Governmental Entity, including any suspension, consent decree, notice of criminal investigation, indictment,



sentencing memorandum, plea agreement, court order or target or no-target letter, and none of the foregoing are pending or, to the Knowledge of Seller, threatened in writing against same.

SECTION 3.07 Intellectual Property.

(a) Section 3.07(a)(1) of the Disclosure Schedule sets forth, with respect to the Scheduled Patents, the following information, as applicable: (i) the title thereof; (ii) each owner thereof; (iii) each jurisdiction in which such Scheduled Patent has been or is registered, granted, issued or in

which registrations, grants or issuances have been applied for; (iv) all registration numbers, issuance numbers, grant numbers, serial numbers and application numbers, as applicable, in each jurisdiction; (v) all filing, maintenance, renewal, expiration and other deadlines relating to such Scheduled Patent occurring between the date hereof and September 30, 2012; and (vi) all filing, registration, issuance, and grant dates of such Scheduled Patents, as applicable, in each jurisdiction. Except as disclosed in Section 3.07(a)(2) of the Disclosure Schedule, (A) the Scheduled Patents have been duly filed, prosecuted and maintained, including the timely submission of all necessary filings and fees in accordance with the legal and administrative requirements of the appropriate Government Entity; (B) the Scheduled Patents have not lapsed, been abandoned, or been forfeited, in whole or in part; (C) no Acquired Patent has been or is the subject of any pending or, to the Knowledge of Seller, threatened, interference, reissue, reexamination, opposition, concurrent use, cancelation, invalidity, or other proceeding; and (D) no Acquired Patent, other than the Scheduled Patents, has been filed.

(b) Each Scheduled Patent properly identifies all inventors of each invention claimed or otherwise disclosed in such Scheduled Patent. Each inventor of each such invention has executed a valid and enforceable written agreement assigning all of such inventor's rights, title and interests in, to and under such invention (and all Patent Rights claiming or otherwise disclosing such inventions) to Seller or a Subsidiary of Seller, and all such assignments have been timely and properly recorded with the United States Patent and Trademark Office, or its foreign equivalent, as applicable. Section 3.07(b) of the Disclosure Schedule accurately identifies each Acquired Patent that is subject to a terminal disclaimer, and the corresponding Patent Right over which the terminal disclaimer has been or is being filed. Each such Acquired Patent identified on Section 3.07(b) of the Disclosure Schedule has been and continues to be commonly owned with the applicable corresponding Patent Right.

(c) Section 3.07(c) of the Disclosure Schedule sets forth a true, complete and accurate list of all agreements, arrangements and understandings (in each case, whether written or oral) relating to any right in, to or under any Assigned Intellectual Property (including all licenses, options, settlement agreements, coexistence agreements, consent agreements, covenants not to sue, assignments and security interests) that has been granted (i) to Seller or any of its Subsidiaries or (ii) by Seller or any of its Subsidiaries to any other Person; *provided*, *however*, that Section 3.07(c) of the Disclosure Schedule need not list (1) licenses for off-the-shelf software or generally available software; (2) non-disclosure agreements with third parties protecting the Assigned Intellectual Property; (3) materials transfer agreements on customary terms; (4) invention assignment agreements with employees, consultants and contractors that assign or grant to Seller or a Seller Subsidiary ownership of inventions and intellectual property developed in the course of providing services to Seller or a Seller Subsidiary by such employees, consultants and contractors; or (5) customary powers of attorney granted to Seller's patent



prosecution counsel solely for purposes of representing Seller before the United States Patent and Trademark Office or its foreign equivalent in the ordinary course of business. Neither Seller nor any of its Subsidiaries has sold, assigned, licensed, transferred or otherwise conveyed to any Person any right to sue or collect damages for past, present or future infringement of any Assigned Intellectual Property.

(d) The activities conducted by or on behalf of Seller or its Subsidiaries related to the Acquired Compounds and the use of the other Acquired Assets and the practice of Assigned Intellectual Property by or on behalf of Seller or its Subsidiaries have not infringed or misappropriated any Intellectual Property rights of any Person. Neither Seller nor any of its Subsidiaries has received any written communication (i) alleging that the activities conducted by or on behalf of Seller or its Subsidiaries related to the Acquired Compounds or use of the other Acquired Assets or the practice of any Assigned Intellectual Property infringes or misappropriates the Intellectual Property rights of any Person, or (ii) that the practice of any Assigned Intellectual Property or the research, development, manufacture, use, sale, offer for sale or importation of any Acquired Compound requires or would require a license to any Person's Intellectual Property.

(e) Except as set out in Section 3.07(e) of the Disclosure Schedule, no Assigned Intellectual Property has been developed or otherwise obtained, in whole or in part, through the use of funding or other resources of any Governmental Entity or institution of higher learning.

(f) Except as set out in Section 3.07(f) of the Disclosure Schedule, to the Knowledge of Seller, no third party is infringing or misappropriating any of the Assigned Intellectual Property and no such claims or assertions have been made against a third party by Seller or any of its Subsidiaries.

(g) Seller and each of its Subsidiaries have taken commercially reasonable steps to protect the confidentiality of all confidential or non-public information included in the Program Know-How.

(h) Except as set out in Section 3.07(h) of the Disclosure Schedule, each employee, consultant and other contractor of Seller or any of its Subsidiaries has entered into a valid and binding written agreement with Seller or the applicable Subsidiary sufficient to, in the case of each employee, vest exclusive title in Seller or the applicable Subsidiary of all Assigned Intellectual Property created or developed by such employee acting within the scope of his or her employment for Seller or the applicable Subsidiary or, in the case of each consultant or other contractor, to vest exclusive title in Seller or the applicable Subsidiary of all Assigned Intellectual Property created or developed by such consultant or other contractor in the performance of his or her services to Seller or the applicable Subsidiary (each such agreement, an "IP Agreement"). Except as set out in Section 3.07(h) of the Disclosure Schedule, no current or former employee, consultant or other contractor of Seller or any of its Subsidiaries (A) has any actual or, to Seller's Knowledge, alleged, right, license, claim or interest whatsoever in or with respect to any of the Assigned Intellectual Property created or developed in the course of his or her employment with, or the provision of services to, Seller or any of its Subsidiaries, or (B) to Seller's Knowledge, is in breach of any IP Agreement.



(i) Except as set out in Section 3.07(i) of the Disclosure Schedule, none of the Assigned Intellectual Property is subject to or bound by any outstanding Judgment, charge, settlement or other disposition of any dispute.

(j) The execution and delivery by Seller of this Agreement and the Ancillary Agreements and the consummation by Seller of the transactions contemplated hereby and thereby (alone or in combination with any other event) and Seller's compliance with the provisions of this Agreement and the Ancillary Agreements do not and will not conflict with, alter, or impair, any rights of Seller and its Subsidiaries in any of the Assigned Intellectual Property or, to Seller's Knowledge, the validity, enforceability, use, right to use, ownership, priority, duration, scope or effectiveness of any Assigned Intellectual Property.

(k) At the Closing, Seller shall transfer good, valid and marketable title to the Assigned Intellectual Property free and clear of all Liens and of any licenses with any future obligations or limitations.

SECTION 3.08 Taxes.

(a) Seller has properly filed on a timely basis all Tax Returns that it was required to file, and all such Tax Returns are true, correct and complete in all respects and were prepared in compliance with all applicable Laws and regulations. Seller has paid on a timely basis all Taxes, whether or not shown on any Tax Return, that were due and payable.

(b) All Taxes that Seller is or was required by Law to withhold or collect have been duly withheld or collected and, to the extent required, have been properly paid to the appropriate Governmental Entity, and Seller has complied with all information reporting and backup withholding requirements, including the maintenance of required records with respect thereto, in connection with amounts paid to any employee, independent contractor, creditor, or other third party.

(c) No examination or audit or other action of or relating to any Tax Return of Seller by any Governmental Entity is currently in progress or, to the Knowledge of Seller, threatened or contemplated. No deficiencies for Taxes of Seller have been claimed, proposed or assessed by any Governmental Entity.

(d) There are no liens or other encumbrances with respect to Taxes upon any of the Acquired Assets, other than with respect to Taxes not yet due and payable.

(e) Seller does not have and has not had a permanent establishment in any country outside its country of formation as defined in any applicable Tax treaty or convention between the United States and such foreign country.

SECTION 3.09 Litigation. There is no Litigation pending or, to the Knowledge of Seller, threatened that could reasonably be expected to affect the Acquired Assets or impair or delay the ability of Seller to effect the Closing, nor is there any Judgment of any Governmental Entity or arbitrator outstanding against, or, to the Knowledge of Seller, investigation by any Governmental Entity involving, the Acquired Assets or that could reasonably be expected to impair or delay the ability of Seller to effect the Closing. Neither Seller nor any of its



Subsidiaries has, since its date of formation, commenced any Litigation relating to the Acquired Assets.

SECTION 3.10 Absence of Changes or Events. Since December 31, 2011, neither Seller nor any of its Subsidiaries has experienced any event or condition that, individually or in the aggregate, has had or is reasonably likely to have, a material adverse effect on the Acquired Assets.

SECTION 3.11 Voting Requirements; Consents. The affirmative vote or written consent of holders of seventy-five percent (75%) of Seller's issued and fully-paid Series C CRPS is the only vote or consent of the holders of any class or series of Seller's capital stock necessary to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement and, before the Closing, Seller shall have obtained such vote or consent.

SECTION 3.12 Transactions with Subsidiaries. No Contracts between or among Seller or any of its Subsidiaries, on the one hand, and any of its directors, officers, employees, consultants, stockholders or Affiliates, on the other hand, relating in whole or in part to any Acquired Asset or Assumed Liability or the use or operation of any Acquired Asset, will continue in effect subsequent to the Closing, other than any such Contracts that assigned rights to any Acquired Asset to Seller prior to the Closing, any non-disclosure agreement and IP Agreements.

SECTION 3.13 Consents. Seller has obtained and delivered to Buyer any third party consent required (a) in order for Seller to transfer or assign to Buyer any right, title or interest in, to or under any Acquired Asset, (b) in order for Buyer to assume from Seller the Assumed Liabilities or (c) to otherwise effect the transactions contemplated by this Agreement or any Ancillary Agreement. Section 3.13 of the Disclosure Schedule lists each such consent and the party from whom it was obtained.

SECTION 3.14 Brokers or Finders. No agent, broker, investment banker or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from Seller or its Affiliates in connection with the Acquisition or any of the other transactions contemplated by this Agreement.

## ARTICLE IV

## Representations and Warranties of Buyer

Buyer hereby represents and warrants to Seller as follows:

SECTION 4.01 Organization, Standing and Power. Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has all requisite corporate power and authority and possesses all governmental franchises, licenses, permits, authorizations and approvals necessary to enable it to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted.

SECTION 4.02 Authority; Execution and Delivery; Enforceability. Buyer has all requisite power and authority to execute this Agreement and the Ancillary Agreements to which



it is a party, to consummate the Acquisition and the other transactions contemplated hereby and thereby and to comply with the terms hereof and thereof. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party, the consummation by Buyer of the Acquisition and the other transactions contemplated hereby and thereby and the compliance by Buyer with the terms hereof and thereof have been duly authorized by all necessary corporate action. Buyer has duly executed and delivered this Agreement and each Ancillary Agreement to which it is a party, and, assuming the

due authorization, execution and delivery by Seller, this Agreement and the Ancillary Agreements to which it is a party constitute Buyer's legal, valid and binding obligation, enforceable against it in accordance with its terms, except to the extent that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and to general equitable principles.

SECTION 4.03 No Conflicts; Consents. The execution and delivery by Buyer of this Agreement and each Ancillary Agreement to which it is a party, the consummation of the Acquisition and the other transactions contemplated hereby and thereby and compliance by Buyer with the terms hereof and thereof do not and will not conflict with, or result in any violation or breach of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancelation or acceleration of any obligation or to loss of a benefit under, or to increased, additional, accelerated or guaranteed rights or entitlements of any other Person under (a) any provision of the charter or by-laws of Buyer or any of its Subsidiaries, (b) any material Contract to which Buyer or any of its Subsidiaries is a party and or by which any of their respective material properties or assets are bound, or (c) any Judgment or Law applicable to Buyer. No Consent of, or registration, declaration or filing with, any Governmental Entity or any other Person is required to be obtained or made by or with respect to Buyer or any of its Subsidiaries in connection with the execution and delivery of this Agreement or any Ancillary Agreement, the consummation of the Acquisition or the other transactions contemplated hereby or thereby (alone or in combination with any other event) or the compliance with the provisions hereof or thereof.

SECTION 4.04 Litigation. There is no Litigation pending or, to the Knowledge of Buyer, threatened that could reasonably be expected to impair or delay the ability of Buyer to effect the Closing, nor is there any Order of any Governmental Entity or arbitrator outstanding against, or, to the Knowledge of Buyer, investigation by any Governmental Entity that could reasonably be expected to impair or delay the ability of Buyer to effect the Closing.

SECTION 4.05 Access. To the Knowledge of Buyer, neither Buyer nor any of its representatives has had unauthorized access to, or has used, any confidential information of the Seller regarding the process undertaken by the Seller in connection with the Seller's solicitation of potential acquisition offers or the terms of any such other offers.

SECTION 4.06 No Buyer Vote Required. No vote or other action of the stockholders of Buyer is required by applicable Law, the certificate of incorporation of Buyer, the bylaws of Buyer or otherwise in order for Buyer to consummate the Acquisition.



SECTION 4.07 Financing. Buyer has sufficient funds on hand and available through existing liquidity facilities (without restrictions on drawdown that would delay payment of the Upfront Payment) to pay the Upfront Payment on the Closing.

## ARTICLE V

## Covenants

SECTION 5.01 Confidentiality. Except as otherwise provided herein, Seller shall keep confidential, shall cause its Subsidiaries to keep confidential, all information included in or solely related to the Acquired Assets and the Assumed Liabilities, except as required by Law; provided, however, that the publication of those pending or in-process publications set forth in Section 5.01 of the Disclosure Schedule shall not constitute a breach of this Section 5.01. Buyer and Seller acknowledge that the confidentiality obligations set forth herein shall not extend to (i) information that is available to the public on the Closing Date, or thereafter becomes available to the public other than as a result of a breach of this Section 5.01 or Section 5.08, (ii) any information in the possession of any Third Party Acquiror of Seller prior to a Change of Control Transaction, other than as a result of disclosure by or on behalf of Seller or any of its Subsidiaries, (iii) any information that is independently developed or discovered by any Third Party Acquiror without reference to any information included in the Acquired Assets other than information described in clause (i), (ii) or (iv), or (iv) is rightfully communicated to any Third Party Acquiror by another third party (other than Seller or any of its Subsidiaries), free and clear of any obligation of confidence and not acquired in any manner from Seller or any of its Subsidiaries.

SECTION 5.02 Expenses. Whether or not the Closing takes place, and except as otherwise explicitly set forth in this Agreement, all costs and expenses incurred in connection with this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby (including fees, costs and expenses of legal counsel, financial advisors and other representatives and consultants) shall be paid by the party incurring such costs or expenses.

SECTION 5.03 Post-Closing Cooperation.

(a) Buyer and Seller shall cooperate with each other, and shall cause their Subsidiaries, officers, employees, agents, auditors and representatives to cooperate with each other, for a period of [**] days after the Closing, to ensure the orderly transition of the Acquired Assets and Assumed Liabilities from Seller or any of its Subsidiaries to Buyer.

(b) Neither party shall be required by this Section 5.03 to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations.

SECTION 5.04 Publicity. Notwithstanding anything to the contrary contained herein, except as may be required to comply with the requirements of any applicable Law and the rules and regulations of any stock exchange upon which the securities of one of the parties is listed, from and after the date hereof, no press release or similar public announcement or communication shall be made or caused to be made by either party and/or any of such party's



Affiliates relating to this Agreement or the transactions contemplated hereby unless specifically approved in advance by the other party; provided, however, that: (a) the parties may jointly issue one or more press release(s) announcing the consummation of the transactions contemplated by this Agreement; (b) either party may issue such press releases, public announcements or communications or make such SEC filings as it determines are reasonably necessary to comply with applicable Law (including disclosure requirements of the SEC) or with the requirements of any stock exchange on which securities issued by a party or its Affiliates are traded; and (c) Seller may deliver such communications to its shareholders regarding this Agreement and the transactions contemplated hereby as may be required by applicable Law or Seller's charter, bylaws or other organizational documents.

SECTION 5.05 Further Assurances. Each of Buyer and Seller agrees, and agrees to cause its Subsidiaries to, to execute and deliver, upon the written request of the other party, any and all such further documents, certificates, papers, schedules and instruments and take such other actions (including cooperating for purposes of obtaining any third-party consents) as may reasonably be deemed necessary or desirable by the other party to consummate the transactions contemplated hereby (including (a) transferring back to Seller any Excluded Asset or Excluded Liability, which Excluded Asset or Excluded Liability was inadvertently transferred to Buyer at the Closing, (b) transferring to Buyer any Acquired Asset or Assumed Liability contemplated by this Agreement to be transferred to Buyer at the Closing which was not so transferred at the Closing and (c) taking all actions reasonably necessary to perfect any rights in the Assigned Intellectual Property).

SECTION 5.06 Purchase Price Allocation. The Purchase Price shall be allocated among the Acquired Assets in accordance with Schedule 5.06. Buyer and Seller agree to report the Federal, state, local and other tax consequences of the purchase and sale hereunder (including in filing Internal Revenue Service Form 8594) in a manner consistent with such allocation and that it will not take any position inconsistent therewith in connection with any Tax Return, refund claim, litigation or otherwise, unless and to the extent required to do so by applicable Law.

SECTION 5.07 Tax Matters.

(a) Seller shall be responsible for and shall pay all Taxes of Seller for all periods and all Taxes that relate to the Acquired Assets that were incurred in or are attributable to any taxable period (or portion thereof) ending on or before the Closing Date. Seller shall prepare and file its Tax Returns for all periods and all Tax Returns that relate to the Acquired Assets for any Taxable periods ending on or before the Closing Date. Such returns will be prepared and filed in accordance with applicable Law and in a manner consistent with past practices.

(b) Any real property, personal property or similar Taxes applicable to the Acquired Assets for a taxable period that includes but does not end on the Closing Date shall be paid by Buyer or Seller, as applicable, and such Taxes shall be apportioned between Buyer and Seller based on the number of days in the portion of the taxable period that ends on the Closing Date (the "Pre-Closing Tax Period") and the number of days in the entire taxable period. Seller shall pay Buyer an amount equal to any such Taxes payable by Buyer which are attributable to the Pre-Closing Tax Period, and Buyer shall pay Seller an amount equal to any such Taxes



payable by Seller which are not attributable to the Pre-Closing Tax Period. Such payments shall be made on or prior to the Closing Date or, if later, on the date such Taxes are due (or thereafter, promptly after request by Buyer or Seller if such Taxes are not identified by Buyer or Seller on or prior to the Closing Date).

(c) All transfer, value added taxes, withholding, sales, and use taxes, deed excise stamps and similar charges ("Transfer Taxes") related to the sale of the Acquired Assets contemplated by this Agreement shall be paid by Seller. The party required under applicable Law will file any necessary Tax Returns and other documentation with respect to all such Taxes and, if Buyer is required by applicable Law to file such Tax Returns, Seller shall pay over to Buyer any such Transfer Taxes payable with respect to such Tax Return.

(d) After the Closing, upon reasonable written notice, Buyer and Seller shall furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance (to the extent within the control of such party) relating to the Acquired Assets and Assumed Liabilities (including, access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election related to Taxes, the preparation of any available Tax clearance certificate, the preparation for any audit by any Governmental Entity, and the prosecution or defense of any claim, suit or proceeding related to any Tax Return. Seller and Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Acquired Assets and Assumed Liabilities. Seller shall not after the Closing take any position in any Tax Return, or reach any settlement or agreement on audit, which is in any manner inconsistent with any position taken by Seller in any filing, settlement or agreement made by Seller prior to the Closing if such inconsistent position (i) requires the payment by Buyer of more Tax than would have been required to be paid had such position not been taken or such settlement or agreement not been reached, (ii) affects the determination of useful life, basis or method of depreciation, amortization or accounting of any of the Acquired Assets or any of the properties, assets or rights of Buyer or (iii) accelerates the time at which any Tax must be paid by Buyer; unless Buyer has previously consented to such position in a writing to Seller.

SECTION 5.08 Non-Competition.

(a) During the period commencing on the Closing Date and ending on the [**] anniversary of the Closing Date, Seller and its Subsidiaries shall not directly or indirectly:

(i) engage in the Business or any aspect thereof; or

(ii) induce any Person which was or is a client, collaboration partner, licensee or customer with respect to the Business (as of the Closing Date or during the prior [**] period ending on the Closing Date) (a "Business Contact") to terminate any of its relationships with Buyer or any Affiliate of Buyer;

provided, however, that this Section 5.08 shall not be construed to prohibit or restrict any Third Party Acquiror or any of such Third Party Acquiror's Affiliated companies (other than Seller or any of its Subsidiaries), from engaging in the Business, if the applicable compound or product is: (i) controlled by the Third Party Acquiror or any of its Affiliated companies (other than Seller or



any of its Subsidiaries) prior to consummation of the relevant Change of Control Transaction and not acquired in any manner from Seller or any of its Subsidiaries; (ii) acquired (whether by in license or otherwise) by such Third Party Acquiror or any of its Affiliated companies (other than Seller or any of its Subsidiaries) after consummation of such Change of Control Transaction and not acquired in any manner from Seller or any of its Subsidiaries; or (iii) developed internally by such Third Party Acquiror or any of its Affiliated companies (other than Seller or any of its Subsidiaries), either before or after consummation of such Change of Control Transaction, without the use of or reference to any of the Acquired Assets or any other confidential information of Buyer.

(b) Seller agrees, on behalf of itself and its Subsidiaries, that the duration and geographic scope of the non-competition provision set forth in this Section 5.08 are reasonable. In the event that any court of competent jurisdiction determines that the duration or the geographic scope, or both, are unreasonable and that such provision is to that extent unenforceable, each of the parties agrees that the provision shall remain in full force and effect for the greatest time period and in the greatest area that would not render it unenforceable. Each of the parties intends that this non-competition provision shall be deemed to be a series of separate covenants, one for each country in the world other than the United States of America and one for each and every county of each and every state of the United States of America where this provision is intended to be effective. Seller agrees that damages may be an inadequate remedy for any breach of this provision and that Buyer shall, whether or not it is pursuing any potential remedies at Law, be entitled to seek equitable relief in the form of preliminary and permanent injunctions, without bond or other security, upon any actual or threatened breach of this Section 5.08.

(c) Seller further acknowledges that Buyer would not enter into this Agreement but for the restrictions in this Section 5.08.

(d) If Seller breaches the obligations of this Section 5.08, Seller shall, and hereby does, assign to Buyer all right, title and interest in and to any inventions conceived, reduced to practice or otherwise generated by or on behalf of Seller in breach of this Section 5.08, as admitted by Seller or determined pursuant to the provisions of Section 7.10, and all Intellectual Property rights therein.

SECTION 5.09 Waiver. Seller and its Subsidiaries hereby waive any obligations of confidentiality, non-competition and exclusivity imposed on any of their employees, consultants, contractors and third party service providers (including manufacturers) with respect solely to the Acquired Assets, solely to the extent necessary to permit Buyer to enter into agreements with such employees, consultants, contractors and service providers to operate the Business from and after the Closing.



## ARTICLE VI

## Indemnification

SECTION 6.01 Indemnification by Seller and Buyer.

(a) From and after the Closing, Buyer and its Affiliates and their respective officers, managers, directors, employees and agents (collectively, the "Buyer Indemnified Parties") shall be held harmless and indemnified by Seller to the extent of any loss, liability, obligation, damage or expense ((x) including reasonable legal fees, costs and expenses, but (y) excluding any unforeseeable, speculative, special, indirect, consequential, exemplary and punitive damages except in respect of a Third Party Claim) (collectively, "Losses") arising from, in connection with or otherwise with respect to:

(i) any inaccuracy in, or breach of, any representation or warranty of Seller contained in this Agreement or any Ancillary Agreement;

(ii) any failure by Seller or any of its Subsidiaries to perform, fulfill or comply with any covenant, agreement, obligation or undertaking of Seller or any of its Subsidiaries contained in this Agreement or any Ancillary Agreement;

(iii) any Excluded Liability, or the operation or ownership of any Excluded Assets; and

(iv) any and all actions, suits, proceedings, demands, assessments, judgments, damages, awards, costs and expenses (including third-party fees and expenses, subject to and in compliance with Section 6.04) related to any of the foregoing or incurred in connection with the enforcement of the rights of any such Buyer Indemnified Party with respect to clauses (i), (ii) and (iii).

(b) From and after the Closing, Seller and its Affiliates and their respective officers, managers, directors, employees and agents (collectively, the "Seller Indemnified Parties") shall be held harmless and indemnified by Buyer to the extent of any Losses arising from, in connection with or otherwise with respect to:

(i) any inaccuracy in, or breach of, any representation or warranty of Buyer contained in this Agreement or any Ancillary Agreement;

(ii) any failure by Buyer to perform, fulfill or comply with any covenant, agreement, obligation or undertaking of the Seller contained in this Agreement or any Ancillary Agreement;

(iii) any Assumed Liability; and

(iv) any and all actions, suits, proceedings, demands, assessments, judgments, damages, awards, costs and expenses (including third-party fees and expenses) incident to any of the foregoing or incurred in connection with the enforcement of the rights of any such Seller Indemnified Party with respect to clauses (i), (ii) and (iii).



(c) The obligations of Seller under 6.01(a)(i) after the Closing shall not be affected by any knowledge by any Buyer Indemnified Party at or prior to the Closing of any breach of a representation or warranty, whether such knowledge came from Seller, Buyer or any other Person. The obligations of Buyer under 6.01(b)(i) after the Closing shall not be affected by any knowledge by any Seller Indemnified Party at or prior to the Closing of any breach of a representation or warranty, whether such knowledge came from Seller, Buyer or any other Person.

(d) Any indemnification payment under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes.

SECTION 6.02 Termination of Indemnification.

(a) Except in the case of Seller's fraud, Seller's obligations to indemnify and hold harmless a Buyer Indemnified Party pursuant to Section 6.01(a)(i) and Section 6.01(a)(iv) (with respect to 6.01(a)(i)): (x) other than with respect to the representations and warranties set forth in Sections 3.01, 3.02, 3.03(a), 3.07(k), 3.08(a) and 3.14 (the "Seller Fundamental Representations"), shall terminate on the date that is eighteen (18) months from the date of this Agreement, and (y) with respect to the Seller Fundamental Representations shall terminate on the date that is twenty-four (24) months from the date of this Agreement; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which a Buyer Indemnified Party shall have, before the expiration of such applicable period, previously made a claim by delivering a notice of such claim in accordance with this Agreement to Seller, which obligations shall survive until all such claims have been resolved.

(b) Except with respect to Buyer's fraud, Buyer's obligations to indemnify and hold harmless any other party pursuant to Section 6.01(b)(i) and Section 6.01(b)(iv) (with respect to 6.01(b)(i)): (x) other than with respect to the representations and warranties set forth in Sections 4.01, 4.02, 4.03 and 4.07 (the "Buyer Fundamental Representations"), shall terminate on the date that is eighteen (18) months from the date of this Agreement and (y) with respect to the Buyer Fundamental Representations shall terminate on the date that is twenty-four (24) months from the date of this Agreement after the expiration of the applicable statue of limitations; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which a Seller Indemnified Party shall have, before the expiration of such applicable period, previously made a claim by delivering a notice of such claim in accordance with this Agreement to Seller, which obligations shall survive until all such claims have been resolved.

(c) Any other obligation to indemnify and hold harmless any Buyer Indemnified Party or Seller Indemnified Party shall terminate ninety (90) days after expiration of the relevant statute of limitations under applicable Law, taking into account extensions thereof; provided, however, that such obligations shall not terminate with respect to any item as to which a Buyer Indemnified Party or a Seller Indemnified Party, as the case may be, has, before the expiration of the relevant period, taking into account extensions thereof, previously made a claim by delivering a notice of such claim in accordance with this Agreement to Seller or Buyer, as the case may be, which obligations shall survive until all such claims have been resolved.



SECTION 6.03 Exclusive Monetary Remedy.

(a) Except in the case of fraud, the right to indemnification under this Article VI shall constitute the sole and exclusive monetary remedy of the Buyer Indemnified Parties and the Seller Indemnified Parties for Losses or otherwise arising from, in connection with this Agreement, including pursuant to Section 6.01(a) and Section 6.01(b), and the Ancillary Agreements or otherwise with respect to any of the transactions contemplated hereby.

(b) Except in the case of Seller's fraud, (x) except for a breach of the Seller Fundamental Representations, Seller's aggregate liability to Buyer Indemnified Parties pursuant to Section 6.01(a)(i) and Section 6.01(a)(iv) (with respect to 6.01(a)(i)) shall not exceed $70,000 plus 20% of each Milestone Contingent Payment that is earned under this Agreement (the "Cap"), and (y) Seller's aggregate liability under Section 6.01(a) shall not exceed the sum of the Upfront Payments and the Contingent Consideration actually paid by Buyer under this Agreement. No Buyer Indemnified Party shall be entitled to recover any Losses under Section 6.01(a)(i) unless and until the aggregate Losses for which they would otherwise be entitled to indemnification under Section 6.01(a)(i) exceed $30,000, at which point the Buyer Indemnified Parties shall become entitled to be indemnified for such Losses in excess of $30,000.

(c) Except in the case of Buyer's fraud, (x) except for a breach of the Buyer Fundamental Representations, Buyer's aggregate liability to Seller Indemnified Parties pursuant to Section 6.01(b)(i) and Section 6.01(b)(iv) (with respect to 6.01(b)(i)) shall not exceed the Cap, and (y) except in the case of product liability claims (with respect to which Buyer's liability shall not be limited), Buyer's aggregate liability under Section 6.01(b) shall not exceed $21,300,000. No Seller Indemnified Party shall be entitled to recover any Losses under Section 6.01(b)(i) unless and until the aggregate Losses for which they would otherwise be entitled to indemnification under Section 6.01(b)(i) exceed $30,000, at which point the Seller Indemnified Parties shall become entitled to be indemnified for such Losses in excess of $30,000.

SECTION 6.04 Procedures.

(a) Third Party Claims.

(i) If a claim by a third party is made against a Buyer Indemnified Party or Seller Indemnified Party (each, an "Indemnified Party") in respect of, arising out of or involving a matter for which the Indemnified Party is entitled to be indemnified pursuant to this Article VI (a "Third Party Claim"), such Indemnified Party shall notify the indemnifying party (the "Indemnifying Party") in writing of the Third Party Claim promptly following receipt by such Indemnified Party of written notice of the Third Party Claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent (and only to the extent) the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure.

(ii) The Indemnified Party shall control all proceedings in connection with such Third Party Claim and, without limiting the foregoing, may in its sole



discretion, subject to Section 6.04(a)(iii), pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any Governmental Authority with respect thereto, and, subject to Section 6.04(a)(iii), may, in its sole discretion, either pay the amount claimed and sue for a refund where applicable Law permits such refund suits or settle or contest the Third Party Claim. For the avoidance of doubt, neither Indemnifying Party nor Indemnifying Party's counsel shall be entitled to participate in the defense of any Third Party Claim; provided that the Indemnified Party shall use reasonable efforts to provide Indemnifying Party with records and information that are reasonably relevant to such Third Party Claim. The Indemnifying Party shall be responsible for the reasonable fees and expenses of counsel employed by the Indemnified Party with respect to any Third Party Claim for which Indemnified Party is entitled to indemnification under this Agreement.

(iii) The Indemnified Party shall not settle or compromise any Third Party Claim without the written consent of the Indemnifying Party, which consent will not be unreasonably withheld, conditioned or delayed. No such consent will be required if the Indemnified Party agrees to non-monetary remedies or to forego all claims for indemnification from the Indemnifying Party with respect to such Third Party Claim; provided, however, that the Indemnified Party shall use reasonable efforts to obtain in such settlement a release of the Indemnifying Party with respect to all such Third Party Claims.

(b) Direct Claims. In the event any Indemnified Party should have a claim against an Indemnifying Party under Section 6.01 that does not involve a Third Party Claim being asserted against or sought to be collected from such Buyer Indemnified Party, the Indemnified Party shall deliver notice of such claim to the Indemnifying Party. The failure by any Indemnified Party so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to such Buyer Indemnified Party under Section 6.01, except to the extent (and only to the extent) that the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure. If the Indemnifying Party does not notify the Indemnified Party within 20 days following its receipt of such notice that the Indemnifying Party disputes Indemnifying Party's liability to the Indemnified Party under Section 6.01, such claim specified by the Indemnified Party in such notice shall be conclusively deemed a Loss of the Indemnifying Party under Section 6.01 and Indemnifying Party shall pay the amount of such Loss to the Indemnified Party on demand or, in the case of any notice in which the amount of the claim (or any portion thereof) is estimated, on such later date when the amount of such claim (or such portion thereof) becomes finally determined.

SECTION 6.05 Set Off Right. Notwithstanding any provision of this Agreement to the contrary, the parties acknowledge and agree that, in addition to any other right hereunder:

(a) Subject to the limitations set forth in Section 6.03, Buyer and its Affiliates shall have the right, but not the obligation, from time to time to set off any Losses for which the Buyer Indemnified Parties are entitled to indemnification hereunder against any Contingent Payment.



(b) If at any time any Contingent Payment is due and payable the amount of Losses with respect to which shall not have been finally determined, then the amount of such Contingent Payment shall be reduced by the amount of Losses Buyer reasonably estimates to be subject to such indemnification claim and that is set forth in the claim notice. If the final amount of Losses for such indemnification claim is less than the amount by which such Contingent Payment was reduced for such claim, then Buyer shall promptly deliver the difference to Seller, together with accrued interest calculated in accordance with Section 1.04(g).

SECTION 6.06 Treatment of Indemnity Payments. Any payments made to an Indemnified Party pursuant to this Article VI shall be treated as an adjustment to the Purchase Price for Tax purposes.

SECTION 6.07 No Implied Representations. The parties acknowledge that, except as expressly provided in ARTICLE III and IV, none of the parties hereto has made or is making any representations or warranties whatsoever, implied or otherwise.

## ARTICLE VII

## General Provisions

SECTION 7.01 Survival of Representations and Covenants. The representations, warranties, covenants and agreements contained in this Agreement and in any document delivered in connection herewith shall survive the Closing and remain in full force and effect until the indemnification obligation therefor terminates in accordance with Section 6.02.

SECTION 7.02 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be transferred, conveyed or assigned, in whole or in part, by operation of Law or otherwise, by either party without the prior written consent of the other party, except that: (i) Buyer may assign, in its sole discretion, any or all of its rights, interests and obligations under this Agreement (a) to any of its Subsidiaries or Affiliates, but, except in the case of assignment of this Agreement as a whole to any such Subsidiary or Affiliate in conjunction with the assignment, conveyance or transfer to such Subsidiary or Affiliate of Buyer's rights in all or substantially all the Acquired Assets as contemplated by Section 1.04(c)(iii)(A), no such assignment shall relieve Buyer of any of its obligations hereunder, or (b) provided that the terms and conditions of Section 1.04(c)(iii), if applicable, are satisfied, in connection with the transfer or sale of all or substantially all of Buyer's business related to the Acquired Assets to a third party, whether by merger, sale of stock, sale of assets or otherwise; and (ii) Seller may assign, in its sole discretion, this Agreement in whole to a single third party in connection with the transfer or sale of all or substantially all of Seller's business related to the Excluded Assets to such third party, whether by merger, sale of shares, sale of assets or otherwise, but no such assignment shall relieve Seller of its obligations hereunder. Any assignment not in accordance with the foregoing shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of and be enforceable by, the parties and their respective permitted successors and assigns.

SECTION 7.03 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties and their permitted successors and assigns and nothing herein expressed or implied



shall give or be construed to give to any Person, other than the parties and such successors and assigns, any legal or equitable rights hereunder (other than, in the case of Article VI, the Buyer Indemnified Parties and the Seller Indemnified Parties).

SECTION 7.04 Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by facsimile or sent, postage prepaid, by registered, certified or express mail or overnight courier service and shall be deemed given when so delivered by hand or facsimile, or if mailed, five (5) Business Days after mailing (two (2) Business Days in the case of express mail or overnight courier service), to the parties at the following addresses or facsimiles (or at such other address or facsimile for a party as shall be specified by like notice:

(a) if to Buyer,

Verastem, Inc.

215 First Street, Suite 440
Cambridge, Massachusetts 02142
USA
Telephone: +1 (617) 252-9300
Facsimile: +1 (617) 812-0059
Attention: Chief Executive Officer

with a copy to:

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
USA
Telephone: +1 (617) 526-6000
Facsimile: +1 (617) 526-5000
Attention: Hal J. Leibowitz, Esq.

(b) if to Seller,

S*BIO Pte Ltd.
c/o EDBI
250 North Bridge Rd #28-00 Raffles City Tower
Singapore 179101
Telephone: +65 6832 6326
Facsimile: +65 6832 6838
Attention: Heng Tong Choo



with a copy to:

Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
USA
Telephone: +1 (858) 550-6000
Facsimile: +1 (858) 550-6420
Attention: Jane K. Adams

SECTION 7.05 Interpretation; Annexes, Exhibits and Schedules; Certain Definitions.

(a) The headings contained in this Agreement, any Annex, Schedule or Exhibit hereto, the Disclosure Schedule and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Annexes, Schedules and Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Annex, Schedule, Exhibit or the Disclosure Schedule but not otherwise defined therein shall have the meanings as defined in this Agreement. When a reference is made in this Agreement to an Article, a Section or an Annex, Schedule, Exhibit, such reference shall be to an Article or a Section of, or an Exhibit to, this Agreement unless otherwise indicated. The words "hereof", "herein" and "hereunder", and words of similar import, when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Except where the context clearly otherwise requires, the meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Any matter set forth in any provision, subprovision, section or subsection of any Schedule referred to herein shall, unless the context otherwise manifestly requires, be deemed set forth for all purposes of such Schedule. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation".

(b) For purposes of this Agreement:

"Acquired Compound" means each of the following: (i) [**]; (ii) any compound claimed generically or specifically in patent applications set forth on Schedule A; and (iii) any derivative, analog, salt, hydrate, solvate, ester, polymorph, isomer, regioisomer or stereoisomer (including enantiomer and diastereoisomer) of any compound described in clause (i) or (ii) above. For the avoidance of doubt, the Acquired Compounds exclude [**].

"Acquired Patents" means (a) the patents and patent applications set forth on Schedule A (the "Scheduled Patents"); (b) any and all divisionals, continuations and continuations-in-part of the Scheduled Patents; (c) any and all foreign patent applications associated with the patent applications referenced in the preceding clauses (a) and (b); (d) any and all patents issued or issuing from the patent applications referenced in the preceding clauses (a) through (c); and (e) any and all certificates of correction, substitutions, reissues, confirmations, reexaminations, renewals, restorations, supplemental protection certificates and extensions of any patent or patent application referenced in the preceding clauses (a) through (d) in any jurisdiction (including any



supranational jurisdiction). For the avoidance of doubt, the Acquired Patents exclude the [**] Patents.

"Affiliate" of any Person means another Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person. For purposes of this definition, "control" (including the terms "controlled by" and "under common control with"),

means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Annual Net Sales" means, with respect to a Product and a calendar year, Net Sales of such Product during such calendar year in each country with respect to which the relevant Sales-Based Contingent Payment Period has not expired.

"Benefit Agreement" means any employment, consulting, bonus, incentive or deferred compensation, equity or equity-based compensation, severance, change in control, retention, termination or other similar Contract between Seller or any of its Affiliates, on the one hand, and any employees or consultants of Seller or any of its Affiliates, in their capacity as employees or consultants of Seller or any of its Subsidiaries, on the other hand.

"Benefit Plan" means any (i) pension plan or post-retirement or employment health or medical plan, program, policy or arrangement, (ii) bonus, incentive or deferred compensation or equity or equity-based compensation plan, program, policy or arrangement, (iii) severance, change in control, retention or termination plan, program, policy or arrangement or (iv) other compensation or benefit plan, program, policy or arrangement, in each case, sponsored, maintained, contributed to or required to be maintained or contributed to by Seller, any of its Affiliates or any Commonly Controlled Entity for the benefit of any employees or consultants of Seller, any of its Affiliates or any Commonly Controlled Entity in their capacity as employees or consultants of Seller or any of its Subsidiaries.

"Business" means the research, development, manufacture, use, sale, offer for sale, importation, other commercialization or other exploitation of any Acquired Compound or Product.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in The City of New York.

"Calendar Quarter" means each of the three (3) month periods ending on March 31, June 30, September 30, and December 31 of any year.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commercially Reasonable Efforts" means such level of efforts required to carry out an obligation in a sustained manner consistent with the efforts normally used by Buyer for a similar activity with respect to a product which is of similar market potential and at a similar stage of development or commercialization, as applicable, as the relevant Product, based on conditions then prevailing, and taking into account technical, medical, clinical efficacy, safety, manufacturing, and delivery considerations, product labeling or anticipated labeling, the



regulatory environment, potential reimbursement issues, the existence of other competitive or potentially competitive products in the market place, the strength of the patent and proprietary position of such Product, the regulatory structure involved, the anticipated profitability of such Product and other relevant factors.

"Commonly Controlled Entity" means any Person or entity that, together with Seller, is treated as a single employer under Section 414 of the Code or under any similar provision of applicable local or foreign Law.

"Contingent Consideration" means the Milestone Contingent Payments and the Sales-Based Contingent Payments.

"Contingent Payment" means any Milestone Contingent Payment and any Sales-Based Contingent Payment.

"Contingent Payment Period" means the period beginning on the Closing Date and ending on the expiration of the last-to-expire Sales-Based Contingent Payment Period.

"Contract" means any loan or credit agreement, bond, debenture, note, mortgage, indenture, guarantee, lease, purchase order or other contract, commitment, agreement, instrument, arrangement, understanding, obligation, undertaking, permit, concession, franchise or license, whether oral or written (including all amendments and modifications thereto).

"Control" means, with respect to any Intellectual Property, possession by a Person of the ability (whether by ownership, license or otherwise) to transfer ownership of, to grant access to, to grant use of, or to grant a license or a sublicense of or under such Intellectual Property without violating the terms of any agreement or other arrangement with any third party who is not an Affiliate of such Person.

"Controlled Group Liability" means any and all liabilities (i) under Title IV of ERISA, (ii) under Section 302 or 4068(a) of ERISA, (iii) under Section 412(n) or 4971 of the Code, (iv) for violation of the continuation coverage requirements of Sections 601 *et seq*. of ERISA and Section 4980B of the Code or the group health requirements of Sections 701 *et seq*. of ERISA and Sections 9801 *et seq*. of the Code, or (v) under any similar provision of applicable local or foreign Law, in the case of each of the foregoing clauses (i) through (v), with respect to any Commonly Controlled Entity.

"Cover" or "Covered" or "Covering" means, (a) with respect to a Product and an Acquired Patent that is an issued patent, that, in the absence of ownership of or a license granted under a Valid Claim of such Acquired Patent, the manufacture, use, offer for sale, sale or importation of such Product would infringe such Valid Claim; and (b) with respect to a Product and an Acquired Patent that is a patent application, that, in the absence of ownership of or a license granted under a Valid Claim of such Acquired Patent, the manufacture, use, offer for sale, sale or importation of such Product would infringe such Valid Claim if such patent application were to issue as a patent.

"Development" means pre-clinical and clinical drug development activities, including clinical trials, relating to the development of pharmaceutical compounds and pharmaceutical

products and submission of information to a Regulatory Authority for the purpose of obtaining Regulatory Approval of a pharmaceutical product, and activities to develop manufacturing capabilities for pharmaceutical products. Development includes optimization and pre-clinical activities, pharmacology studies, toxicology studies, formulation, manufacturing process development and scale-up (including bulk compound production), quality assurance and quality control, technical support, pharmacokinetic studies, clinical trials and regulatory affairs activities.

"Dollar" or "$" means U.S. Dollar.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"EMA" means the European Medicines Agency, or any successor entity thereto.

"EU" means the European Union, as constituted from time to time.

"FDA" means the U.S. Food and Drug Administration, or any successor entity thereto.

"First Commercial Sale" means, with respect to a Product in a country, the first sale of such Product by or on behalf of a Selling Person, to a Person who is not a Selling Person or an Affiliate of a Selling Person, for end use or consumption in such country after Marketing Approval has been received for such Product in such country. Transfers of reasonable quantities of a Product for clinical trial purposes and transfers or sales of reasonable quantities of a Product for compassionate or similar use shall not be considered a First Commercial Sale.

"GAAP" means U.S. Generally Accepted Accounting Principles or other similar generally accepted accounting principles used by the relevant Selling Person, including International Financial Reporting Standards, as applicable; in each case, consistently applied.

"Guarantee" of or by any Person means any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) any Indebtedness of any primary obligor or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (ii) to purchase property, securities or services for the purpose of assuring the owner of any Indebtedness of any primary obligor of the payment of such Indebtedness or (iii) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay any Indebtedness of such primary obligor; provided, however, that the term Guarantee shall not include endorsements for collection or deposit, in each case in the ordinary course of business.

"IND" means an investigational new drug application filed with the FDA pursuant to 21 CFR 312 or any other equivalent filing made with an applicable Governmental Entity outside the United States of America; but excluding any IND for an exploratory IND study (also known as a Phase 0 study) conducted in accordance with the FDA's 2006 Guidance on Exploratory Investigational New Drug (IND) Studies or pursuant to a Clinical Trial Notification in Australia or a similar process in another country.



"Indebtedness" of any Person means (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid by such Person, other than trade credit incurred in the ordinary course of business, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services, (vi) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (vii) all Guarantees by such Person, (viii) all capital lease obligations of such Person, (ix) the notional amount of all obligations of such Person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements and (x) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner.

"Indication" means a specific disease, infection or other condition which is recognized by a Regulatory Authority as being a disease, infection or condition. All variants of a single disease, infection or condition (whether classified by severity or otherwise) will be treated as the same Indication, except that different types of cancer (e.g., as defined by site or cancer cell origin) will be treated as different Indications.

"Intellectual Property" means the following subsisting throughout the world: (i) Patent Rights; (ii) registered trademarks and service marks, logos, Internet domain names, corporate names and doing business designations and all registrations and applications for registration of the foregoing, common law trademarks and service marks and trade dress, and all goodwill in the foregoing (collectively, "Trademarks"); (iii) copyrights, designs, data and database rights and registrations and applications for registration thereof, including moral rights of authors; (iv) Know-How, whether patentable or nonpatentable, whether copyrightable or noncopyrightable and whether or not reduced to practice; and (v) other proprietary rights relating to any of the foregoing.

"Know-How" means all technical information, know-how and data, including inventions (whether patentable or not), discoveries, trade secrets, specifications, instructions, processes, formulae, materials, expertise and other technology applicable to compounds, formulations, compositions, products or to their manufacture, research, development, registration, use or commercialization or methods of assaying or testing them or processes for their manufacture, formulations containing them, compositions incorporating or comprising them and including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical and analytical, safety, quality control, manufacturing, preclinical and clinical data, instructions, processes, formulae, expertise and information.

"Knowledge", as it relates to Seller, means, with respect to any matter in question, the actual knowledge, after reasonable inquiry, of the individuals set forth on Exhibit D, and, as it relates to Buyer, means, with respect to any matter in question, the actual knowledge, after reasonable inquiry, of the individuals set forth on Exhibit E. Reasonable inquiry does not require

that any of such Persons conduct or obtain any freedom-to-operate opinions or similar opinions of counsel or any Intellectual Property clearance searches.

"Litigation" means any suit, claim, action, arbitration, investigation or proceeding.

"Marketing Approval" means, with respect to any Product in a country or jurisdiction, the approval, license or authorization of the applicable Regulatory Authority(ies) necessary for the marketing and sale of such Product for a particular Indication in such country or jurisdiction.

"MHLW" means the Japanese Ministry of Health, Labor and Welfare and any successor agency thereto.

"NDA" means a New Drug Application (as more fully described in 21 CFR 314.50 et seq. or its successor regulation) submitted to the FDA.

"Net Sales" means, with respect to a Product, the gross amount invoiced for any sale of such Product by a Selling Person to a Person other than another Selling Person, less the sum of the following deductions, to the extent attributable to such Product and to the extent included in the invoice price or otherwise actually incurred, allowed, accrued, granted or taken (if not previously deducted from the amount invoiced):

(i) reasonable and customary quantity, trade and cash discounts and reasonable and customary rebates to customers granted in the ordinary course of business;

(ii) amounts repaid or credited by reason of rejections or returns of such Product (including returns of such Product by reason of a recall or damaged or defective goods);

(iii) customs, duties, tariffs and other governmental charges, as well as sales, use, excise, inventory, value added, and other Taxes, related to the sale, delivery or use of such Product by the Selling Person borne by the Selling Person without reimbursement from any Third Party (but not including taxes assessed against the income derived from such sale);

(iv) discounts, adjustments, rebates, fees, credits, reimbursements, cash sale incentives, deductions, retroactive price reductions and chargebacks granted to managed health care organizations, healthcare institutions, other buying groups, providers of healthcare or social and welfare systems, and including government-mandated rebates;

(v) postage charges, shipping materials, freight, insurance and other transportation charges; and

(vi) amounts previously included in Net Sales of such Product that are written-off by the relevant Selling Person as uncollectible in accordance with GAAP.

Such amounts shall be determined from the books and records of the applicable Selling Person in accordance with GAAP. Sales of a Product between or among the Selling Persons for



resale shall not be included within Net Sales; provided, however, that any subsequent sale of a Product by any Selling Person to another Person that is not a Selling Person shall be included within Net Sales.

Use or transfer of a Product for promotional, sampling, compassionate use, patient assistance, named patient or research and development purposes, shall not be considered Net Sales; provided, that, the quantity of Product that may be given away as free samples for such purposes will be such quantities customary in the industry for this sort of Product.

In the case of any sale of a Product for value other than in an arm's length transaction exclusively for cash, such as barter or counter-trade, Net Sales shall be calculated based on the fair market value of the consideration received.

"Patent Files" means, with regard to an Acquired Patent: (a) the complete file histories for such Acquired Patent; and (b) all files relating to such Acquired Patent that are held or maintained on Seller's behalf by Seller's outside patent counsel, Phillips Ormonde Fitzpatrick, including all contents of such files.

"Patent Rights" means any patents (including certificates of correction, substitutions, extensions (including supplemental protection certificates), registrations, confirmations, reissues, re-examinations and renewals), any patent applications (including any provisional applications, divisionals, continuations and continuations-in-part) in any jurisdiction (including any supranational jurisdiction), and any invention disclosures.

"Permitted Encumbrances" means, each of the following as are immaterial, individually or in the aggregate, in amount and would not impair the ownership or use of the Acquired Assets: (a) liens for current Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings; (b) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable Law or governmental regulations; (c) statutory or common Law liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies, and other like liens; (d) the terms and conditions of (i) licenses for off-the-shelf software or generally available software, (ii) non-disclosure agreements, and (iii) materials transfer agreements on customary terms; and (e) liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods.

"Person" means any individual, firm, corporation, partnership, limited liability company, trust, joint venture, Governmental Entity or other entity.

"Phase 2 Trial" means, with respect to a Product, a clinical trial of such Product in any country that meets the requirements of 21 CFR § 312.21(b), as amended (or its successor regulation or comparable laws in countries outside the United States).

"Phase 3 Trial" means, with respect to a Product, a clinical trial of such Product in any country that meets the requirements of 21 CFR § 312.21(c), as amended (or its successor regulation or comparable laws in countries outside the United States).

"Pivotal Trial" means, with respect to a Product, a human clinical trial of such Product that is intended to form the primary basis of an efficacy claim in an NDA submission and is the subject of a special protocol assessment agreement with the FDA.

"Pricing Approval" means, with respect to a Product in a country or jurisdiction, the approval, agreement, determination or governmental decision establishing the price or level of reimbursement for such Product, if required in the relevant country or jurisdiction prior to sale of such Product in such country or jurisdiction.

"Product" means any product (including any pharmaceutical or therapeutic product or mixture) containing an Acquired Compound as an ingredient, including all formulations, dosage forms, line extensions, indications and modes of administration thereof.

"Program Know-How" shall mean Know-How not included in the Acquired Patents, which Know-How is Controlled by Seller or any of its Subsidiaries immediately prior to the Closing or prepared by a third party consultant or contractor on behalf of Seller or any of its Subsidiaries, to the extent such Know-How is directed to the research, Development, manufacture (including synthesis, formulation, finishing or packaging), use, offer for sale, sale or import of any Acquired Compound.

"Regulatory Approval" means, with respect to an Product in a country or jurisdiction, (a) Marketing Approval, and (b) all Pricing Approvals with respect to such Product in such country or jurisdiction; provided, however, that, with respect to the EU, such Pricing Approval is obtained from the relevant Governmental Entity(ies) in France, Germany, Italy, Spain or the United Kingdom.

"Regulatory Authority" means any federal, national, multinational, state, provincial or local regulatory agency, department, bureau or other governmental entity with authority over the marketing, pricing or sale of a pharmaceutical product in a country, including the FDA, the EMA, and the MHLW.

"Sales-Based Contingent Payment Period" means, with respect to a Product and a country, the period of time beginning on the date of First Commercial Sale of such Product in such country and ending on the expiration of the last Valid Claim of any Acquired Patents Covering such Product in such country.

"[**]" means the compound designated by Seller as "[**]," the structure of which is described in Exhibit B.

"[**]" means the compound designated by Seller as "[**]," the structure of which is disclosed in the patents and patent applications set forth on Exhibit C.

"[**] Patents" means (a) the patents and patent applications set forth on Exhibit C; (b) any and all divisionals, continuations and, to the extent claiming subject matter claimed in a patent or patent application set forth on Exhibit C, continuations-in-part of the Scheduled Patents; (c) any and all foreign patent applications associated with the patent applications referenced in the preceding clauses (a) and (b); (d) any and all patents issued or issuing from the patent applications referenced in the preceding clauses (a) through (c); and (e) any and all



certificates of correction, substitutions, reissues, confirmations, reexaminations, renewals, restorations, supplemental protection certificates and extensions of any patent or patent application referenced in the preceding clauses (a) through (d) in any jurisdiction (including any supranational jurisdiction).

"Selling Person" means, with respect to a Product, Buyer and its Affiliates and each licensee, sublicensee, assignee or other grantee of rights to develop, market and sell such Product.

"Subsidiary" of any Person means another Person, an amount of the voting securities, other ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, fifty percent (50%) or more of the equity interests of which) is owned directly or indirectly by such first Person or by another Subsidiary of such Person.

"Taxes" means any and all taxes, charges, fees, duties, contributions, levies or other similar assessments or liabilities, including, without limitation, income, gross receipts, corporation, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, registration, recording, excise, real property, personal property, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, social security, national insurance, business license, business organization, environmental, workers compensation, payroll, profits, severance, stamp, occupation, escheat, windfall profits, customs duties, franchise, estimated and other taxes of any kind whatsoever imposed by Singapore, the United States of America or any state, local or other government, or any agency or political subdivision thereof, and any interest, fines, penalties, assessments or additions to tax imposed with respect to such items or any contest or dispute thereof.

"Tax Returns" means any and all reports, returns (including information returns), declarations, or statements relating to Taxes, including any schedule or attachment thereto and any related or supporting workpapers or information with respect to any of the foregoing, including any amendment thereof filed with or submitted to any Governmental Entity in connection with the determination, assessment, collection or payment of Taxes or in connection with the administration, implementation or enforcement of or compliance with any legal requirement relating to any Tax.

"Third Party Acquiror" means a third party which acquires Seller, whether by merger, sale of stock, sale of assets or otherwise (a "Change of Control Transaction"), which third party (a) is not the surviving entity following a merger of Seller and (b) was not an Affiliate of Seller or an officer, director, employee or consultant of Seller or any of its Subsidiaries, nor stockholder of Seller or any of its Subsidiaries, prior to the closing of such Change of Control Transaction.

"Valid Claim" means (a) any claim in any unexpired and issued patent that has not been disclaimed, revoked or held invalid or unenforceable by a decision of a court or other governmental agency of competent jurisdiction from which no appeal can be taken, or with respect to which an appeal is not taken within the time allowed for appeal, and that has not been disclaimed or admitted to be invalid or unenforceable through reissue, disclaimer or otherwise,

or (b) any claim of a pending patent application that has not been abandoned, finally rejected or expired without the possibility of appeal or re-filing, nor pending for [**] or more years, in the case of U.S. patent applications, or [**] or more years, in the case of all other patent applications from the earlier priority date claimed for such application.

SECTION 7.06 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each party and delivered to the other party.

SECTION 7.07 Entire Agreement. This Agreement and each Ancillary Agreement to which both Buyer and Seller are parties contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. Neither party shall be liable or bound to any other party in any manner by any representations, warranties or covenants relating to such subject matter except as specifically set forth herein, in each Ancillary Agreement to which both Buyer and Seller are parties.

SECTION 7.08 Severability. If any provision of this Agreement (or any portion thereof) or the application of any such provision (or any portion thereof) to any Person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to any other Persons or circumstances.

SECTION 7.09 Specific Enforcement. The parties agree that irreparable damage may occur and that the parties may not have any adequate remedy at law if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, without bond or other security, this being in addition to any other remedy to which any party is entitled at law or in equity.

SECTION 7.10 Arbitration of Disputes.

(a) In the event any party has a dispute regarding the Agreement, including the interpretation, performance, application, termination or breach of this Agreement (the "Disputes"), such party shall notify the other party regarding the nature and terms of such dispute. The parties hereto shall attempt in good faith to resolve all Disputes by mutual agreement.

(b) If any Dispute cannot be resolved by the parties pursuant to Section 7.10(a) or otherwise within [**] days of the notice of such Dispute, then upon written demand by either party such Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules (the "Arbitral Tribunal"), each party nominating one (1) arbitrator and the two (2) party-appointed arbitrators nominating the chairperson. The place of arbitration shall be San



Francisco, California, USA, if Buyer demands arbitration, and Boston, Massachusetts, USA, if Seller demands arbitration. Subject to each party's right to seek injunctive relief pursuant to Section 7.10(c), the arbitration shall be the sole and exclusive forum for resolution of any such Dispute, and the award rendered shall be final and binding. Judgment on the award rendered may be entered in any court having jurisdiction thereof.

(c) The procedures for arbitration pursuant to this Section 7.10 shall be as follows:

(i) The arbitration shall be conducted in the English language and any non-English-language documents presented to the Arbitral Tribunal at such arbitration shall be accompanied by an English translation thereof.

(ii) Any award of the Arbitral Tribunal: (A) shall be in writing; and (B) shall state the reasons upon which such award is based.

(iii) The Arbitral Tribunal shall have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages.

(iv) Prior to the appointment of the Arbitral Tribunal, any party may seek appointment of an emergency arbitrator pursuant to said rules or may apply to any court having jurisdiction hereof and seek injunctive relief in order to maintain the status quo until such time as the arbitration award is rendered or the Dispute is otherwise resolved. After the appointment of the Arbitral Panel, any party may make an application to the Arbitral Tribunal seeking injunctive relief to maintain the status quo until such time as the arbitration award is rendered or the Dispute is otherwise resolved.

(d) Notwithstanding the foregoing, in addition to the right of the parties to arbitrate Disputes in this Section 7.10, the Arbitral Tribunal shall have the power to (i) enter an award or order of specific performance to enforce the observance and performance of such covenant or agreement and (ii) grant an injunction restraining such breach or threatened breach. The non-breaching party shall not be required to provide any bond or other security in connection with any such award, order or injunction or in connection with any arbitration or related action or proceeding. Any arbitration awards, whether preliminary or final, shall be enforceable in a court of competent jurisdiction.

SECTION 7.11 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.

SECTION 7.12 Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. By an instrument in writing, Buyer or Seller may waive compliance by the other party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform. Each party agrees that no failure or delay by the other party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege hereunder.

SECTION 7.13 Disclosure Schedules. The representations and warranties contained in Article III of this Agreement are subject to (a) the exceptions and disclosures set forth in the part of the Disclosure Schedule corresponding to the particular Section of Article III in which such representation and warranty appears; (b) any exceptions or disclosures explicitly cross-referenced in such part of the Disclosure Schedule by reference to another part of the Disclosure Schedule; and (c) any exception or disclosure set forth in any other part of the Disclosure Schedule to the extent it is readily apparent on its face and without further inquiry that such exception or disclosure is intended to qualify such representation and warranty. The information set forth in the Disclosure Schedule is disclosed solely for the purposes of this Agreement, and no information set forth therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever, including of any violation of Law or breach of any agreement. The Disclosure Schedule and the information and disclosures contained therein are intended only to qualify and limit the representations, warranties and covenants of Seller contained in this Agreement.

**[Remainder of Page Intentionally Left Blank]**



IN WITNESS WHEREOF, Buyer and Seller have duly executed this Agreement as of the date first written above.

**VERASTEM, INC.**

By: /s/ Robert Forrester
Name: Robert Forrester
Title: COO

**S*BIO PTE LTD.**

By: /s/ Tamar Howson
Name: Tamar Howson
Title: CEO

**[Signature Page to Asset Purchase Agreement.]**



SCHEDULE 5.06

**Purchase Price Allocation**

The Purchase Price shall be allocated by the Buyer and Seller among the Acquired Assets and the non-competition covenants in accordance with Section 1060 of the Code and any applicable U.S. Treasury Regulations. The Buyer will provide Seller a proposed allocation as soon as possible and in any event within [**] Business Days from the date of this Agreement, and Seller will deliver to the Buyer a notice setting forth any proposed changes to such proposed allocation within [**] Business Days after the delivery of the proposed allocation to Seller. The Buyer and Seller will negotiate in good faith to resolve any disputed items, and if they are unable to agree on the allocation within [**] Business Days after Seller's delivery of its notice of proposed changes to the Buyer, then such dispute shall be deemed a Dispute (as defined in Section 7.10 of the Agreement) and will be resolved pursuant to Section 7.10 of the Agreement.



SCHEDULE A

**Acquired Patents**

| [**] | | |
|---|---|---|
| **Jurisdiction** | **Application No.** | **Patent No. (if any)** |
| [**] | [**] | [**] |
| [**] | [**] | [**] |
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**[**]**

| Jurisdiction | Application No. | Patent No. (if any) |
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| [**] | [**] | [**] |



EXHIBIT A

PATENT ASSIGNMENT

*[attached]*



**ASSIGNMENT OF PATENTS AND PATENT APPLICATIONS**

S*Bio Pte Ltd., a company organized under the laws of Singapore, located at c/o EDBI, 250 North Bridge Rd #28-00 Raffles City Tower, Singapore 179101 ("Assignor"), hereby irrevocably sells, transfers, conveys and assigns to Verastem, Inc., a Delaware corporation, located at 215 First Street, Suite 440, Cambridge, Massachusetts 02142 USA ("Assignee"), the entire right, title and interest for the United States of America and its territorial possessions, and all foreign countries and patent regions, including all rights of priority, in inventions disclosed in the patents and patent applications identified on Schedule A, all such patents and patent applications, and in and to all Letters Patents of the United States and all foreign countries and patent regions which may or shall be granted on said inventions or applications, or any parts thereof, or any divisional, continuing, reissue, reexamination, extension or other applications based in whole or in part thereon or which claim priority or are related by terminal disclaimer thereto or therefrom, including the right to recover for past infringement (the "Assignment").

Assignor acknowledges having received consideration for the Assignment.

Assignor agrees to execute all applications, amended specifications, deeds or other instruments, and to do all acts necessary or proper to secure the grant of Letters Patent in the United States and in all other countries and patent regions to Assignee, to vest and confirm in Assignee, its successors and assigns, the legal title to all such patents and patent applications, including any separate written forms of assignment necessary to perfect the Assignment in specific countries and patent regions. Assignor appoints any officer of Assignee as its duly authorized attorney to execute, file, prosecute and protect the same before any government agency, court or authority. Assignor hereby declares that the foregoing powers are coupled with an interest and are and shall be irrevocable by Assignor.

Assignor does hereby authorize and request the Commissioner of Patents and Trademarks of the United States, and the equivalent authority in each other country and patent region in the world, to issue such Letters Patent as shall be granted upon said inventions or applications based thereon to Assignee, its successors and assigns.

[***Remainder of page left intentionally blank.]***



IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed by its duly authorized officer.

S*BIO PTE LTD.

_____

Name:
Title:
Date:

STATE OF )

) ss

COUNTY of

On this day of May, 2012, before me, the undersigned notary public, personally appeared , proved to me through satisfactory evidence of identification, which was , to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose.

[affix seal]

Notary Public
My commission expires:

*S*Bio Signature Page—Patent Assignment-S*Bio to Verastem*

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IN WITNESS WHEREOF, Assignee has caused this Assignment to be executed by its duly authorized officer.

VERASTEM, INC.

_____
Name:
Title:
Date:

**COMMONWEALTH OF MASSACHUSETTS**

County of

On this day of May, 2012, before me, the undersigned notary public, personally appeared , proved to me through satisfactory evidence of identification, which was , to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

[affix seal]

Notary Public
My commission expires:

*Verastem Signature Page—Patent Assignment-S*Bio to Verastem*

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**Schedule A**

**Assignment of Patents and Patent Applications**

**1. Patents and patent applications titled:** [**]

| | |
|---|---|
| **Priority Information** | [**] |
| **PCT Application Number** | [**] |
| **PCT Filing Date** | [**] |

**[**]**

| Jurisdiction | Application No. | Filing Date or National phase entry date (dd/mm/yyyy) | Patent No. (if any) | Grant date (if applicable) (dd/mm/yyyy) |
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**2. Patents and patent applications titled:** [**]

| | |
|---|---|
| **Priority Information** | [**] |
| **PCT Application Number** | [**] |
| **PCT Filing Date** | [**] |

**[**]**

| Jurisdiction | Application No. | Filing Date or National phase entry date (dd/mm/yyyy) | Patent No. (if any) | Grant date (if applicable) (dd/mm/yyyy) |
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EXHIBIT B

[**] STRUCTURE

[**]

[**]



EXHIBIT C

[**] and [**] Patents

[**]

Chemical Name : [**]

**[**]**

| Jurisdiction | Application No. | Patent No. (if any) |
|---|---|---|
| [**] | [**] | [**] |
| [**] | [**] | [**] |
| [**] | [**] | [**] |
| [**] | [**] | [**] |



EXHIBIT D

SELLER’S KNOWLEDGE REPRESENTATIVES

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[**]

[**]

EXHIBIT E

BUYER’S KNOWLEDGE REPRESENTATIVES

[**]

[**]

**Exhibit 10.2**

**[**]** = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

*EXECUTION VERSION*

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("**Agreement**") is made effective as of the 11th day of July, 2012 (the "**Effective Date**"), by and between Verastem, Inc., a corporation organized and existing under the laws of Delaware with offices at 215 First Street, Suite 440, Cambridge, Massachusetts 02142 ("**LICENSEE**") and PFIZER Inc., a corporation organized and existing under the laws of Delaware with offices at 235 East 42nd Street, New York, NY 10017 ("**PFIZER**"). LICENSEE and PFIZER may, from time-to-time, be individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

**RECITALS**

WHEREAS, PFIZER Controls the Licensed Technology (hereinafter defined); and

WHEREAS, LICENSEE wishes to obtain, and PFIZER wishes to grant, certain licenses under the Licensed Technology on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties, intending to be legally bound hereby, agree to the foregoing and as follows:

**1. DEFINITIONS**

**1.1.** "**Affiliate**" means, with respect to a Party, any Person that controls, is controlled by, or is under common control with that Party. For the purpose of this definition, "control" shall refer to: (a) the possession, directly or indirectly, of the power to direct the management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise; or (b) the ownership, directly or indirectly, of fifty percent (50%) or more of the voting securities of such entity.

**1.2.** "**Applicable Laws**" means all applicable laws, statutes, rules, regulations and guidelines, including all good manufacturing practices and all applicable standards or guidelines promulgated by the appropriate Regulatory Authority.

**1.3.** "**Business Day**" means any day other than a Saturday, a Sunday or a day on which commercial banks located in New York, New York are authorized or required by law to remain closed.

**1.4.** "**Calendar Quarter**" means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31.

**1.5.** "**Calendar Year**" means any twelve (12) month period commencing on January 1.

**1.6.** "**Combination Product**" means a Product that includes a Compound and at least one (1) Other Active Ingredient.

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**1.7.** "**Commercialize**" or "**Commercialization**" means to manufacture for sale, market, promote, otherwise offer for sale, distribute, and sell.

**1.8.** "**Commercially Reasonable Efforts**" means, with respect to the Development or Commercialization of a Product, that level of efforts and resources commonly dedicated in the research-based pharmaceutical industry by a similarly situated company to the development or commercialization, as the case may be, of a product of similar commercial potential at a similar stage in its lifecycle, in each case taking into account issues of safety and efficacy, product profile, the proprietary position, the then-current competitive environment for such product and the likely timing of such Product's entry into the market, the regulatory environment and status of such Product, and other relevant scientific, technical and commercial factors.

**1.9.** "**Compounds**" means the compounds designated by PFIZER as PF-04554878 and PF-00562271, and all salts, polymorphs and formulations thereof.

**1.10.** "**Control**" or "**Controlled**" means, with respect to any Intellectual Property Rights, the legal authority or right (whether by ownership, license or otherwise other than pursuant to this Agreement) of a Party to grant a license or a sublicense of or under such Intellectual Property Rights to the other Party without breaching the terms of any agreement with a Third Party. For clarity, if a Party only can grant a license or sublicense to Intellectual Property Rights, or provide access to a material or document, of a limited scope due to an encumbrance imposed by a Third Party, "Control" or "Controlled" shall be construed to so limit the license or sublicense to such Intellectual Property Rights or the provision of, or provision of access to, such materials or documents (as applicable).

**1.11.** "**Develop**" or "**Development**" means to conduct research and development activities (including related manufacturing activities) under conditions designed to yield data suitable for inclusion in, or otherwise necessary to support, an application for Regulatory Approval of a Product by a Regulatory Authority within the Territory.

**1.12.** "**Distributor**" means a Third Party, other than a Third Party to which any sublicense hereunder is granted, that (a) purchases any Products in finished form from LICENSEE or any of its Affiliates or sublicensees with the intent or purpose of reselling such Products; and (b) has the right to Commercialize such Products in one or more regions.

**1.13.** "**EMA**" means the European Medicines Agency, or any successor agency thereto.

**1.14.** "**FDA**" means the United States Food and Drug Administration, or a successor federal agency thereto.

**1.15.** "**Field**" means all therapeutic, prophylactic and diagnostic uses of a Product in humans, including the treatment of human disease with such Product, regardless of the route of administration.



**1.16.** "**First Commercial Sale**" means with respect to a Product, the first sale for use or consumption of the Product following receipt of Regulatory Approval for such Product in a country in the Territory.

**1.17.** "**GAAP**" means the generally accepted accounting principles in the United States, consistently applied.

**1.18.** "**IND**" means: (a) an investigational new drug application filed with the FDA for authorization for the investigation of a Product; or (b) any foreign equivalents as filed with the applicable Regulatory Authorities in other countries or regulatory jurisdictions in the Territory, as applicable.

**1.19.** "**Indication**" for a Product means the use of such Product for treating a particular disease or medical condition.

**1.20.** "**Intellectual Property Rights**" means all trade secrets, copyrights, patents, patent applications, Trademarks, moral rights, know-how and any and all other intellectual property or proprietary rights now known or hereafter recognized in any jurisdiction.

**1.21.** "**Licensed Know-How**" know-how, processes, data, regulatory filings, information and knowledge, whether or not patentable, that (a) are Controlled by PFIZER on the Effective Date and used by PFIZER as of or prior to the Effective Date in the development or manufacture of a Compound or a Product containing a Compound; (b) are Controlled by PFIZER on the Effective Date, and is necessary to make, use or sell a Compound or a Product as it exists on the Effective Date containing a Compound; or (c) arises out of PFIZER's exercise of the license granted to PFIZER under Section 2.3 and directly relates to the formulation of a Compound.

**1.22.** "**Licensed Patent Rights**" means (a) the patents and patent applications listed on Schedule A; and (b) (i) all continuations, divisionals, renewals and continuations-in-part (to the extent the claims thereof are entirely supported by one or more of the patents and patent applications listed on Schedule A to which it claims priority) claiming priority to the patents and patent applications described in clause (a), (ii) any other subsequent filings in any country worldwide claiming priority to the patents and patent applications described in clause (a) (to the extent the claims thereof are entirely supported by one or more of the patents and patent applications listed on Schedule A to which it claims priority); and (iii) all letters of patent granted with respect to any of the foregoing and patents of addition, restorations, extensions, supplementary protection certificates, registration or confirmation patents, reissues and re-examinations of any of the foregoing described in clauses (b)(i) and (b)(ii), each of the foregoing (b)(i) through (b)(iii), to the extent Pfizer Controls such patents and patent applications.

**1.23.** "**Licensed Technology**" means collectively, the Licensed Patent Rights and Licensed Know-How.



**1.24.** "**MAA**" means (a) a Marketing Authorization Application for a Product filed with (i) the EMA under the centralized European procedure (including amendments and supplements thereto) or (ii) a Regulatory Authority in any country in the EU if the centralized European procedure is not used to obtain Regulatory Approval of such Product; or (b) any other equivalent or related Regulatory Filing, such as a Type II variation, to gain Regulatory Approval of a Product in any country in the EU.

**1.25.** "**Milestone**" means each milestone set forth in Section 5.1.3.

**1.26.** "**NDA**" means: (a) a new drug application filed with the FDA for authorization for marketing the Product; or (b) any of its foreign equivalents as filed with the applicable Regulatory Authorities in other countries or regulatory jurisdictions in the Territory, as applicable.

**1.27.** "**Net Sales**" means the gross amount invoiced by or on behalf of LICENSEE, its Affiliates and their respective sublicensees (each a "**Selling Party**") for sales of a Product, less the following deductions actually paid, granted, or accrued and to the extent such deductions are included in the gross invoiced sales price of such Product: (a) rebates, quantity and cash discounts, and other usual and customary discounts to customers; (b) taxes and duties paid, absorbed or allowed which are directly related to the sale of such Product; (c) credits, allowances, discounts and rebates to, and chargebacks for spoiled, damaged, out-dated, rejected or returned Product; (d) actual freight and insurance costs incurred in transporting such Product to customers, ***provided that*** in no event shall deductions for freight and insurance exceed three percent (3%) of the gross amount invoiced; (e) discounts or rebates or other payments required by Applicable Laws, including any governmental special medical assistance programs; and (f) customs duties, surcharges and other governmental charges incurred in connection with the exportation or importation of such Product. Subsections (a) through (f) shall be collectively referred to as "**Deductions**".

The following principles shall apply in the calculation of Net Sales:

**(a)** Products will be considered "sold" when a sale by a Selling Party is recognized in accordance with revenue recognition policies mandated by GAAP.

**(b)** Nothing herein will prevent a Selling Party from selling, distributing or invoicing Products at a discounted price for shipments to Third Parties in connection with clinical studies, compassionate sales, or an indigent program or similar bona fide arrangements in which the Selling Party agrees to forego a normal profit margin for good faith business reasons, provided that the proceeds from any Products so sold or distributed shall be included for purposes of calculating Net Sales.

**(c)** A sale or transfer of Products between any of the Selling Parties will not result in any Net Sales, and Net Sales instead will be based on subsequent sales or distribution to a non-Selling Party, unless such Products are used or consumed by a Selling Party in the course of its own activities (other than resale or transfer to a non-Selling Party). For the avoidance of doubt, sales to Distributors shall be included in the determination of Net Sales.

**(d)** In the case of any sale or other disposal of a Product for non-cash consideration, Net Sales shall be calculated as the fair market price of such Product in the country of sale or disposal. Notwithstanding the foregoing, provision of a Product for the purpose of conducting pre-clinical or clinical research shall not be deemed to be a sale, so long as such Product is provided at a price which does not exceed the reasonably estimated cost of production and distribution thereof.

**(e)** Except as otherwise provided herein, Net Sales shall be calculated in accordance with GAAP.

Notwithstanding the foregoing, in the event a Product is sold in a country in the Territory as a Combination Product in a Calendar Quarter, Net Sales of such Combination Product will be calculated as follows:

**(i)** if the Compound contained in such Combination Product and Other Active Ingredient(s) contained in such Combination Product are each sold separately in such country during such Calendar Quarter, the Net Sales attributable to such Combination Product during such Calendar Quarter shall be calculated by multiplying actual Net Sales of such Combination Product by the fraction A/(A+B) where: A is the average gross selling price in such country during such Calendar Quarter of such Compound sold separately in the same formulation and dosage, and B is the sum of the average gross selling prices in such country during such Calendar Quarter of such Other Active Ingredients(s) sold separately in the same formulation and dosage;

**(ii)** if the Compound contained in such Combination Product is sold independently of the Other Active Ingredient(s) contained in such Combination Product in such country during such Calendar Quarter, but the average gross selling price of the Other Active Ingredient(s) in such country during such Calendar Quarter cannot be determined, the Net Sales attributable to such Combination Product during such Calendar Quarter shall be calculated by multiplying actual Net Sales of such Combination Product by the fraction A/C where: A is the average gross selling price in such country during such Calendar Quarter of such Compound sold



separately in the same formulation and dosage and C is the average gross selling price of such Combination Product in such country during such Calendar Quarter; and

**(iii)** if the Compound contained in such Combination Product is not sold independently of the Other Active Ingredient(s) contained in such Combination Product in such country during such Calendar Quarter, then the Net Sales attributable to such Combination Product shall be calculated by multiplying the Net Sales of such Combination Product by the fraction D/(D+E) where: D is the fair market value of the portion of such Combination Product that contains such Compound and E is the fair market value of the portion of such Combination Product containing such Other Active Ingredients contained in such Combination Product, as such fair market values are determined by mutual agreement of the Parties.

**1.28.** "**Other Active Ingredient**" means any therapeutically active pharmaceutical ingredient other than a Compound.

**1.29.** "**Person**" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

**1.30.** "**Product**" means any and all pharmaceutical products that contain a Compound.

**1.31.** "**Regulatory Approval**" means, with respect to a Product in any country or regulatory jurisdiction, any approval (including where required, pricing and reimbursement approvals), registration, license or authorization that is required by the applicable Regulatory Authority to market and sell such Product in such country or regulatory jurisdiction.

**1.32.** "**Regulatory Authority**" means any governmental agency or authority responsible for granting Regulatory Approvals for a Product in the Territory.

**1.33.** "**Regulatory Filings**" means, with respect to a Product, any submission to a Regulatory Authority of any appropriate regulatory application, including, without limitation, any IND, any NDA, any submission to a regulatory advisory board, any marketing authorization application (including any MAA), and any supplement or amendment thereto.

**1.34.** "**Royalty Term**" means, on a Product-by-Product and country-by country basis, the period commencing on the First Commercial Sale of such Product in such country and expiring upon the later of: (a) expiration or abandonment of the last Valid Claim of the Licensed Patent Right that covers the Use of such Product in such country; or (b) ten (10) years following the date of First Commercial Sale of such Product in such country.

**1.35.** "**Territory**" means worldwide.

**1.36.** "**Third Party**" means any Person other than a Party or an Affiliate of a Party.

**1.37.** "**Trademarks**" means all registered and unregistered trademarks, service marks, trade dress, trade names, logos, insignias, domain names, symbols, designs, and combinations thereof.

**1.38.** "**Use**" means to research, develop, make, have made, use, sell, offer for sale, market, distribute, import, export or otherwise exploit.

**1.39.** "**Valid Claim**" means either: (a) a claim of an issued and unexpired patent included within the Licensed Patent Rights, which has not been permanently revoked or declared unenforceable or invalid by an unreversed and unappealable or unreversed and unappealed decision of a court or other appropriate body of competent jurisdiction and which has not been abandoned, disclaimed, denied or admitted to be invalid or unenforceable through reissue, re-examination, disclaimer or otherwise; or (b) a claim of a pending patent application included within the Licensed Patent Rights, which claim was filed in good faith and has not been cancelled, withdrawn, abandoned or finally disallowed without the possibility of appeal or refiling of such application.

**1.40.** **Additional Definitions**. Each of the following definitions is set forth in the Section indicated below:

| Definition | Section |
|---|---|
| Agreement | Preamble |
| Bankruptcy Code | 13.4 |
| Bankruptcy Event | 13.4 |
| Cap | 12.3 |
| CDA | 17.11 |
| Change in Control | 17.1 |
| Claims | 11.1 |
| Deductions | 1.27 |
| Defense Action | 8.1 |
| Designated Affiliate/Third Party | 13.5.5(e) |
| Developed IP | 7.2 |
| Development Plan | 4.1.1 |
| Effective Date | Preamble |
| FAK | 1.21 |
| Fees | 6.1.1 |
| Force Majeure Event | 17.4 |
| Government | 10.3.1 |
| Government Official | 10.3.1 |
| Indemnified Party | 11.3 |
| Indemnifying Party | 11.3 |



| Definition | Section |
|---|---|
| Initial Development Plan | 4.1.1 |
| Knowledge | 10.2.1 |
| LICENSEE | Preamble |
| LICENSEE Indemnitees | 11.2 |
| LICENSEE Inventory | 13.5.5(e) |
| LICENSEE Withholding Tax Action | 5.3.2 |
| Milestone Payment | 5.1.3 |
| Party(ies) | Preamble |
| PFIZER | Preamble |
| PFIZER Indemnitees | 11.1 |
| PFIZER Transfer Notice | 3.1 |
| Pharmacovigilance Agreement | 4.3.3 |
| Recipients | 9.2 |
| Relevant Records | 6.1.1 |
| Remaining Recoveries | 8.2.4 |
| Residuals | 2.4 |
| Selling Party | 1.27 |
| Subscription Agreement | 5.1.2 |
| Third Party Infringement | 8.1 |
| Third Party IP | 5.1.4 |
| Third Party Payment | 5.1.4 |

## 2. LICENSE GRANT

**2.1.** **License Grant**.

**2.1.1.** **Patent Rights**. Subject to the terms and conditions of this Agreement PFIZER hereby grants to LICENSEE a sublicensable (subject to Section 2.2), royalty-bearing right and license under the Licensed Patents Rights to Use the Compounds and Products in the Field within the Territory. The license granted under this Section 2.1.1 shall be exclusive even as to PFIZER with respect to Compounds and Products, in each case except as expressly provided in Section 2.3 or as necessary for PFIZER to carry out its obligations under Sections 3.1and 4.4.2.

**2.1.2.** **Know-How**. Subject to the terms and conditions of this Agreement, PFIZER hereby grants to LICENSEE an exclusive (even as to PFIZER except as expressly provided in Section 2.3 or as necessary for PFIZER to carry out its obligations under Sections 3.1and 4.4.2), sublicensable (subject to Section 2.2), royalty-bearing right and license to use the Licensed Know-How to Use the Compounds and Products in the Field within the Territory.



**2.1.3.** **Affiliates**. To the extent that any of the Licensed Technology is Controlled by an Affiliate of PFIZER, then promptly following the Effective Date, PFIZER shall procure that such Affiliate undertakes all necessary actions to give effect to the licenses granted under this Section.

**2.2.** **Sublicense Rights**. LICENSEE may sublicense the rights granted to it by PFIZER under this Agreement (a) to any Third Party upon PFIZER's prior written approval, which approval shall not be unreasonably withheld or delayed, or (b) to any of its Affiliates. For the avoidance of doubt, it shall not be reasonable for Pfizer to withhold its consent to a sublicense merely because the proposed sublicensee is a competitor or potential competitor of Pfizer in any area, and the Parties anticipate that the only bases upon which Pfizer may reasonably withhold its consent to any proposed sublicensee are circumstances regarding the financial or other resources of the proposed sublicensee that would give rise to a bona fide concern over the ability of the proposed sublicensee to carry out its obligations hereunder, or circumstances that would give rise to a bona fide concern regarding the likelihood that the proposed sublicensee could reasonably be expected to fail to carry out its activities with respect to the Development or Commercialization of the Products in compliance with Applicable Laws, including the U.S Foreign Corrupt Practices Act of 1977 (as amended). Any and all sublicenses shall be subject to the following requirements:

**2.2.1.** All sublicenses shall be subject to and consistent with the terms and conditions of this Agreement and shall: (a) preclude the assignment of such sublicense without the prior written approval of PFIZER, (b) include PFIZER as a third party beneficiary under the sublicense with the right to enforce the terms of such sublicense, and (c) preclude the granting of further sublicenses in contravention with the terms and conditions of this Agreement. In no event shall any sublicense relieve LICENSEE of any of its obligations under this Agreement.

**2.2.2.** LICENSEE shall furnish to PFIZER a true and complete copy of each sublicense agreement and each amendment thereto, within thirty (30) days after the sublicense or amendment has been executed.

**2.3.** **Retained Rights**. LICENSEE acknowledges and agrees that PFIZER retains the right to make, have made and use and have used the Licensed Technology for all internal research purposes, and LICENSEE hereby grants to PFIZER a worldwide, irrevocable, non-exclusive, fully paid up license (with the right to sublicense to any Affiliate without the need for LICENSEE'S consent) to such Licensed Technology solely for such internal research purposes, without the consent of LICENSEE.

**2.4.** **Residuals**. PFIZER may use for any purpose the Residuals resulting from access to or work with the Compounds, Products and Licensed Know-How. As used herein, "**Residuals**" means information in non-tangible form which may be retained by persons who have had access to the Compounds, Products and



Licensed Know-How, including ideas, concepts, know-how or techniques contained therein.

**2.5.** **No Additional Rights**. Nothing in this Agreement shall be construed to confer any rights upon LICENSEE by implication, estoppel, or otherwise as to any active pharmaceutical ingredients, compounds, products, technology or Intellectual Property Rights of PFIZER or its Affiliates other than the rights under the Licensed Technology expressly granted herein. For the avoidance of doubt, this Agreement does not exclude Pfizer from Using any active pharmaceutical ingredient, compound or product that may be contained in a Product, other than the Compounds.

## 3. TRANSFER ACTIVITIES

**3.1.** **Technology Transfer and Transition Services**. PFIZER shall use reasonable efforts to (a) transfer to LICENSEE the embodiments of the Licensed Technology set forth in Schedule B; and (b) perform the services set forth in Schedule B for the compensation or reimbursement, if any, provided for in Schedule B (where the activities under subsections (a) and (b) shall be collectively referred to as "**Transfer Activities**"). PFIZER shall use reasonable efforts to perform the Transfer Activities and complete such Transfer Activities within the time periods specified in Schedule B.

## 4. DEVELOPMENT, MANUFACTURING, REGULATORY AND COMMERCIALIZATION

**4.1.** **Development**.

**4.1.1.** LICENSEE shall itself, or through its Affiliates or sublicensees, use Commercially Reasonable Efforts to Develop Products in the Territory, and LICENSEE shall undertake all Development activities at its sole expense. Without limiting the foregoing, in connection with its efforts to Develop Products, LICENSEE shall bear all responsibility and expense for filing Regulatory Filings in LICENSEE's name and obtaining Regulatory Approval for Products. LICENSEE's Development activities will be undertaken

in accordance with a Development plan (the "**Development Plan**"), the initial Development Plan being agreed to by the parties in writing as of the date hereof (the "**Initial Development Plan**"). PFIZER acknowledges that (a) the Initial Development Plan has been based on the due diligence carried out by LICENSEE prior to the Effective Date, largely utilizing information furnished to LICENSEE by PFIZER; (b) such Initial Development Plan is predicated, in part, on clinical data that has not yet been generated; and (c) such Initial Development Plan is subject to revision from time to time to take into account, among other factors: safety or efficacy concerns, matters related to patent protection, or issues related to present or future marketability or profitability, including existing or anticipated competition, and that such revisions may include seeking



Regulatory Approval for different Indications than are contained in the Initial Development Plan. Each Development Plan or amendment shall be treated by both Parties as a good faith statement of LICENSEE's intentions for the Development of the Product, but such Development Plan shall not be deemed to be a contractual commitment by LICENSEE to undertake all of the efforts described in such Plan or to refrain from making adjustments to such Plan that, in LICENSEE's reasonable judgment, are necessary in light of factors described in the preceding sentence. LICENSEE shall provide to PFIZER reports regarding LICENSEE's progress and future plans, including amendments to the Development Plan, every [**] months during the terms of this Agreement, and Pfizer will be provided with an opportunity to comment on all amendments to the Development Plan as well as all Development and Commercialization activities. Such reports shall include information regarding LICENSEE's activities with respect to the Milestone events described in Section 5.1.3(a) and, when available, information demonstrating whether or not such Milestone events have been achieved.

**4.1.2.** Notwithstanding the provisions of the foregoing Section 4.1.1, LICENSEE shall, at a minimum, use Commercially Reasonable Efforts to (a) execute the Development Plan; (b) find a formulation that addresses the pharmacokinetic variability of the current formulation of the existing Product (with such formulation activities to begin no later than December 31, 2012); and (c) conduct appropriate human studies designed to establish proof of mechanism of a Product (with such studies to be initiated no later than June 30, 2013), ***provided that*** LICENSEE shall not be in breach of this Section 4.1.2 if it fails to undertake the activities described in this Section 4.1.2 by the date specified in this Section 4.1.2 due to factors outside of LICENSEE's reasonable control.

**4.2.** **Commercialization**. LICENSEE shall itself, or through its Affiliates, sublicensees or Distributors, use Commercially Reasonable Efforts to Commercialize the Products throughout the Territory, it being understood that LICENSEE, in the exercise of such Commercially Reasonable Efforts, may determine to not Commercialize the Product in certain countries in the Territory. LICENSEE shall undertake such activities at its sole expense and shall have sole decision-making authority with respect to such activities.

**4.3.** **Regulatory and Pharmacovigilance**.

**4.3.1.** **Transfer of Regulatory Filings**. PFIZER shall transfer and assign to LICENSEE all existing Regulatory Filings in accordance with Schedule B and LICENSEE shall bear all costs and expenses payable to Third Parties in connection with such transfer and assignment. LICENSEE shall use commercially reasonable efforts to seek Regulatory Approval for Products throughout the Territory, it being understood that LICENSEE, in the



exercise of such Commercially Reasonable Efforts, may determine to not seek Regulatory Approval for Product in certain countries in the Territory.

**4.3.2.** **Safety Reporting**. PFIZER shall submit PFIZER-generated safety reports for all Compounds to the relevant regulatory authorities until the effective date of the transfer of the applicable clinical trial sponsorship (including, any IND, clinical trial application (or "CTA") or clinical trial notification (or "CTN")) to LICENSEE.

**4.3.3.** **Pharmacovigilance Agreement**. During the implementation of the Transition Plan, the safety units of each of the Parties shall discuss whether or not it may be necessary to put in place a written agreement for exchanging adverse event and other safety information relating to the Products prior to PFIZER's transfer of the existing INDs to LICENSEE, and if they agree that such an agreement is necessary, they shall promptly meet and agree upon such an agreement (the "**Pharmacovigilance Agreement**"). Such Pharmacovigilance Agreement shall ensure that adverse events and other safety information is exchanged upon terms that will permit each Party to comply with Applicable Laws and requirements of Regulatory Authorities.

**4.3.4.** **Regulatory Cooperation**. In the event that one or more Regulatory Authorities contact PFIZER regarding an audit of any of the research and development done prior to the Effective Date, by, or under the direction of, PFIZER regarding the Compounds or the Products, PFIZER shall promptly notify LICENSEE and shall coordinate with LICENSEE and provide reasonable co-operation to furnish or provide access to such Regulatory Authority as may be required to comply with the audit so requested.

**4.4.** **Manufacturing**. Subject to Section 2.3 and to the rights needed by Pfizer to manufacture Product as set forth in Section 4.4.2, LICENSEE shall have the sole right to manufacture, or have manufactured, Compounds and Products, and it shall be entitled to use, and to sublicense the manufacturing rights under the Licensed Patent Rights, for such purposes. Except as provided below, LICENSEE shall be responsible for all aspects of manufacturing of the Compounds and Products.

**4.4.1.** **Transfer of Inventory**. Promptly after the Effective Date, PFIZER shall transfer free of charge (except for transportation costs which shall be borne by LICENSEE) the quantities of Compounds and Products set forth in Schedule C hereto to LICENSEE. PFIZER shall be permitted to retain any other quantities of the Compounds and Products for purposes of exercising the rights retained and the license granted to PFIZER under Section 2.3.

**4.4.2.** **Additional Supply**. PFIZER shall manufacture and supply to LICENSEE: (a) [**][**]mg pills of Product containing [**] that meet the specifications for the pills previously used by PFIZER in clinical trials for such Product; and (b) [**] placebo pills for the pills described in clause (a). Upon the delivery of such pills described in clauses (a) and (b) of the immediately preceding sentence, LICENSEE shall pay to PFIZER $[**]. PFIZER shall use its commercially reasonable efforts to ship such pills no later than September 30, 2012 and LICENSEE shall have no obligation to accept delivery of such pills shipped after September 30, 2012, provided that PFIZER is prepared to ship such pills after September 30, 2012, PFIZER shall so notify LICENSEE and LICENSEE shall notify PFIZER whether LICENSEE will accept delivery of such pills on a mutually agreeable date. If LICENSEE notifies PFIZER that it will accept such delivery after September 30, 2012, LICENSEE shall pay for such pills as set forth above.

## 5. PAYMENT TERMS

### 5.1. Payment Terms.

**5.1.1.** **Upfront Payment**. In partial consideration of the licenses and rights granted to LICENSEE hereunder, LICENSEE shall pay to PFIZER one million five hundred thousand dollars ($1,500,000) on the Effective Date; Such payment shall be non-refundable and non-creditable.

**5.1.2.** **Equity**. In partial consideration of the licenses and rights granted to LICENSEE hereunder, LICENSEE shall issue to PFIZER one hundred ninety-two thousand and twelve (192,012) shares of LICENSEE common stock on the Effective Date. In connection with the issuance of such shares of LICENSEE common stock, on the Effective Date PFIZER and LICENSEE shall enter into the subscription agreement substantially in the form of Annex A attached hereto (the "**Subscription Agreement**").

**5.1.3.** **Milestone Payments**. LICENSEE shall notify PFIZER as soon as practicable upon (and in any event within [**] days after) achievement of each Milestone. In further consideration of the licenses and rights granted to LICENSEE, within [**] days after achievement of each Milestone set forth below (unless otherwise specified below), LICENSEE shall pay to PFIZER the corresponding non-creditable and non-refundable milestone payment (each, a "**Milestone Payment**").



**(a)** **Development Milestone.**

| DEVELOPMENT MILESTONE | MILESTONE PAYMENT |
|---|---|
| [**] | $ [**] |
| [**] | $ [**] |

Notwithstanding the foregoing, if LICENSEE or its Affiliates or sublicensees achieve demonstration of at least [**], LICENSEE shall pay to PFIZER a single Milestone Payment of [**] dollars ($[**]) within [**] days after achievement of such Milestone in lieu of the Milestone Payments set forth in the table above. In addition, if LICENSEE or its Affiliates or sublicensees [**] milestone set forth above in this Section, regardless of results, but has not yet paid a total amount of [**] dollars ($[**]) pursuant to this Section 5.1.3(a), LICENSEE shall pay to PFIZER a Milestone Payment of [**] dollars ($[**]) *minus* any amount previously paid pursuant to this Section 5.1.3(a), such amount to be payable within [**] days after [**].

**(b)** **Regulatory Milestones.**

| REGULATORY MILESTONES | MILESTONE PAYMENT |
|---|---|
| [**] | $ [**] |
| [**] | $ [**] |
| [**] | $ [**] |

The payments described in this Section 5.1.3(b) shall be due and payable within [**] days after achievement of the relevant milestones described above.

**(c)** **Sales Milestones**

| SALES MILESTONES | MILESTONE PAYMENT |
|---|---|
| [**] | $ [**] |
| [**] | $ [**] |
| [**] | $ [**] |
| [**] | $ [**] |
| [**] | $ [**] |

For the avoidance of doubt, if annual aggregate Net Sales of Products reach any of the Net Sales thresholds specified in the

table above for the first time at any time when any Milestone Payment corresponding to any lower amount of annual aggregate Net Sales of Products has not yet been paid, then all such unpaid Milestone Payments shall be paid at the same time. For example, if annual aggregate Net Sales of Products exceed [**] dollars ($[**]) in a Calendar Year, and LICENSEE has not yet paid the Milestone Payment for the achievement of [**] dollars ($[**]) of annual aggregate Net Sales of Products, LICENSEE shall pay to PFIZER a total of [**] dollars ($[**]). The milestones provided for in this Section 5.1.3(c) shall be due and payable within [**] days after the relevant aggregate Net Sales level is achieved, even if achieved prior to the end of the relevant Calendar Year.

**(d)** For the avoidance of doubt: (i) each Milestone Payment shall be payable only once upon achievement of the applicable Milestone; and (ii) satisfaction of a Milestone by a sublicensee or assignee of, or Third Party retained by, LICENSEE or its Affiliates shall be deemed to have been satisfied by LICENSEE for purposes of this Section 5.1.3.

**5.1.4. Royalty Payments**.

**(a)** In consideration of the licenses and rights granted to LICENSEE hereunder, LICENSEE shall pay to PFIZER, with respect to sales of the Products in the Territory during the applicable Royalty Term, an amount equal to:

**(i)** [**] percent ([**]%) of Net Sales in a Calendar Year (or portion thereof) for the portion of annual aggregate Net Sales of the Products in the Territory (aggregated in all countries with respect to which the Royalty Term for such Products has not expired) below or equal to [**] dollars ($[**]); plus

**(ii)** [**] percent ([**]%) of Net Sales in a Calendar Year (or portion thereof) for the portion of annual aggregate Net Sales of the Products in the Territory (aggregated in all countries with respect to which the Royalty Term for such Products has not expired) greater than [**] dollars ($[**]) and less than or equal to [**] dollars ($[**]); plus

**(iii)** [**] percent ([**]%) of Net Sales in a Calendar Year (or portion thereof) for the portion of annual aggregate Net Sales of the Products in the Territory (aggregated in all countries with respect to which the Royalty Term for such Products has not expired) in excess of [**] dollars ($[**]).



LICENSEE shall pay such royalties to PFIZER within [**] days following the end of each Calendar Quarter after the date of the First Commercial Sale.

**(b)** In the event that LICENSEE cannot Commercialize a particular Product in the form as it existed as of the Effective Date without infringing a Third Party's Intellectual Property Rights ("**Third Party IP**"), and if LICENSEE pays a royalty to a Third Party for the right to Commericialize such Product under such Third Party IP (the "**Third Party Payment**"), then LICENSEE may credit [**] percent ([**]%) of such Third Party Payment for a given Calendar Quarter against the Royalties owed and payable on the Net Sales for the Product for such Calendar Quarter. Notwithstanding the foregoing, in no event shall such credits reduce the Royalties payable to PFIZER to less than [**] percent ([**]%) of the Royalties owed for such Net Sales prior to the application of such credits.

**(c)** All royalty payments made in accordance with Section 5.1.4(a) shall be accompanied by a report that includes reasonably detailed information regarding a total monthly sales calculation on a country-by-country basis of gross sales of Products, Net Sales of Products (detailing all Deductions) and all royalties payable to PFIZER for the applicable Calendar Quarter (including any foreign exchange rates used). In addition, in order to enable PFIZER to prepare its quarterly and annual public disclosures regarding PFIZER's results of operations, within [**] days after the end of each Calendar Quarter, LICENSEE shall deliver to PFIZER a good faith, preliminary estimate of the foregoing information, provided that PFIZER acknowledges that such information is an estimate only and may vary from the final report delivered pursuant to the preceding sentence.

**5.1.5. Other Payments**. LICENSEE shall pay to PFIZER any other amounts due under this Agreement within [**] days following receipt of invoice.

**5.1.6. Late Payments**. Any late payments shall bear interest, to the extent permitted by law, at five percent (5%) above the Prime Rate of interest as reported in the *Wall Street Journal* on the date payment is due.

**5.2. Payment Method**.

**5.2.1. Currency**. With respect to Net Sales invoiced in U.S. dollars, the Net Sales and the amounts due for royalties under Section 5.1.4 will be expressed in U.S. dollars. With respect to Net Sales invoiced in a currency other than U.S. dollars, payments will be calculated based on amounts converted to U.S. dollars using currency exchange rates for the



Calendar Quarter for which remittance is made for such royalties. Conversion of Net Sales recorded in local currencies to U.S. dollars will be performed in a manner consistent with LICENSEE's normal practices used to prepare its audited financial statements for external reporting purposes, ***provided that*** such practices use a widely accepted source of published exchange rates.

**5.2.2. Method of Payment**. All payments from LICENSEE to PFIZER shall be made by wire transfer in U.S. Dollars to the credit of such bank account as may be designated by PFIZER in writing to LICENSEE. Any payment which falls due on a date which is not a Business Day may be made on the next succeeding Business Day.

**5.3. Taxes**.

**5.3.1. VAT.** It is understood and agreed between the Parties that any payments made under this AGREEMENT are exclusive of any value added or similar tax (VAT), which shall be added thereon as applicable.

**5.3.2. Withholding Taxes.** If LICENSEE is required to make a payment to PFIZER subject to a deduction of tax or withholding tax, then (i) if such withholding or deduction obligation arises as a result of any action by LICENSEE, including but not limited to any assignment or sublicense, or any failure on the part of LICENSEE to comply with applicable tax laws or filing or record retention requirements, that has the effect of modifying the tax treatment of the parties hereto (a "**LICENSEE Withholding Tax Action**"), then the sum payable by LICENSEE (in respect of which such deduction or withholding is required to be made) shall be increased to the extent necessary to ensure that PFIZER receives a sum equal to the sum which it would have received had no such LICENSEE Withholding Tax Action occurred, (ii) otherwise, the sum payable by LICENSEE (in respect of which such deduction or withholding is required to be made) shall be made to PFIZER after deduction of the amount required to be so deducted or withheld, which deducted or withheld amount shall be remitted in accordance with applicable law.

**5.3.3. Tax Cooperation.** To the extent LICENSEE is required to deduct and withhold taxes on any payments to PFIZER, LICENSEE shall pay the amounts of such taxes to the proper Governmental Authority in a timely manner and promptly transmit to PFIZER an official tax certificate or other evidence of such withholding sufficient to enable PFIZER to claim such payments of taxes. PFIZER shall provide to LICENSEE any tax forms that may be reasonably necessary in order for LICENSEE not to withhold tax or to withhold tax at a reduced rate under an applicable bilateral income tax treaty. Each party shall provide the other with reasonable assistance to enable the recovery, as permitted by law, of withholding taxes, VAT, or similar obligations resulting from payments



made under this Agreement, such recovery to be for the benefit of the party bearing such withholding tax or VAT.

**5.3.4. Tax Forms.** The parties agree to cooperate and produce on a timely basis any tax forms or reports reasonably requested by the other Party in connection with any payment made by the LICENSEE to PFIZER under this Agreement.

## 6. RECORDS; AUDIT RIGHTS

**6.1. Relevant Records**.

**6.1.1. Relevant Records**. LICENSEE shall keep, and will cause each of its Affiliates or sublicensees, as applicable, to keep, accurate books and records of accounting for the purpose of calculating all payments due to PFIZER under Section 5.1 (such payments, collectively the "**Fees**" and such books and records, collectively the "**Relevant Records**"). For the [**] years following the end of the Calendar Year to which each will pertain, such Relevant Records will be kept by LICENSEE or such Affiliate or sublicensee at each of their principal place of business.

**6.1.2. Audit Request**. At the request of PFIZER, LICENSEE shall, and, shall cause each of its Affiliates or sublicensees to, permit PFIZER and its representatives (including an independent auditor), at reasonable times and upon reasonable notice, to examine the Relevant Records. Such examinations may not (a) be conducted for any Calendar Year more than [**] years after the end of such year; (b) be conducted more than [**] in any twelve (12) month period; or (c) be repeated for any Calendar Year. Such audit shall be requested in writing at least [**] days in advance, and shall be conducted during LICENSEE's normal business hours and otherwise in manner that minimizes any interference to LICENSEE's business operations.

**6.1.3. Audit Fees and Expenses**. PFIZER shall bear any and all fees and expenses incurred by it in connection with any such audit of the Relevant Records; ***provided***, ***however***, in the event an audit reveals an underpayment by LICENSEE of more than five percent (5%) as to the period subject to the audit, LICENSEE shall reimburse PFIZER for any reasonable and documented out-of-pocket costs and expenses of the audit within [**] days after receiving invoices thereof.

**6.1.4. Payment of Deficiency**. If such audit or, if the Parties dispute the findings of such audit, an independent accounting firm as described below, concludes that additional payments were owed or that excess payments were made during such period, or if the Parties otherwise agree that additional payments were owed or that excess payments were made during such period, LICENSEE will pay the additional royalties or amounts with



interest from the date originally due as provided in Section 5.1.6 or PFIZER will reimburse such excess payments without interest, within [**] days after the date on which a written report of such audit or the report of the final determination of such independent accounting firm is delivered to the Parties or on which the Parties reach such agreement, as the case may be. In the event of a dispute regarding such Relevant Records, the Parties will work in good faith to resolve the disagreement. If the Parties are unable to reach a mutually acceptable resolution of any such dispute within [**] days, such dispute will be resolved by submitting such dispute to an independent accounting firm mutually agreeable to both Parties, which firm shall render its decision within [**] days after submission of the dispute to such firm. PFIZER shall treat all information subject to review under this Section 6.1 in accordance with the confidentiality provisions of Section 9 and the Parties will cause any auditor to enter into a reasonably acceptable confidentiality agreement with LICENSEE obligating such firm to retain all such financial information in confidence pursuant to such confidentiality agreement.

## 7. INTELLECTUAL PROPERTY RIGHTS

**7.1.** **Pre-existing IP**. Subject only to the rights expressly granted to the other Party under this Agreement, each Party shall retain all rights, title and interests in and to any Intellectual Property Rights that are owned, licensed or sublicensed by such Party prior to or independent of this Agreement.

**7.2.** **Developed IP**. LICENSEE shall own all rights, title and interests in and to any Intellectual Property Rights that are both: (a) related to a Compound or Product; and (b) conceived solely by LICENSEE, its Affiliates or sublicensees following the Effective Date (collectively, "**Developed IP**").

**7.3.** **Patent Prosecution and Maintenance of Licensed Patent Rights.**

**7.3.1.** **Prosecution and Maintenance of Licensed Patent Rights**. LICENSEE shall be responsible for filing, prosecuting (including in connection with any reexaminations, oppositions and the like) and maintaining the Licensed Patent Rights in the Territory. LICENSEE shall file, prosecute and maintain the Licensed Patent Rights using qualified outside patent counsel and foreign patent associates selected by LICENSEE, ***provided that*** LICENSEE identifies such counsel for PFIZER in advance and PFIZER consents to such counsel (such consent not to be unreasonably withheld or delayed). LICENSEE shall be responsible for all costs and expenses in connection with such filing, prosecution and maintenance, ***provided that*** if LICENSEE provides PFIZER with a written request to abandon, or not file a patent application included in, any of the Licensed Patent Rights at least sixty (60) days in advance of the relevant deadline: (a) LICENSEE shall no longer be responsible for such costs and expenses relating to filing, prosecuting and maintaining (as applicable) such



Licensed Patent Right; (b) PFIZER may, or may allow a Third Party to, file, prosecute and maintain (in its sole discretion) such Licensed Patent Right; (c) upon PFIZER's request, LICENSEE shall promptly provide all files related to filing, prosecuting and maintaining such Licensed Patent Right to counsel designated by PFIZER; and (d) the term "Licensed Patent Rights" automatically shall be modified to exclude such patent or patent application as of the date LICENSEE provides such written request to PFIZER.

**7.3.2.** **Cooperation**. Upon the written request of PFIZER, LICENSEE shall provide PFIZER with material correspondence with the relevant patent offices pertaining to LICENSEE's prosecution of the Licensed Patent Rights. On at least a yearly basis, and also upon written request, LICENSEE shall provide to Pfizer a report detailing the status of all Licensed Patent Rights, including any patent term extensions, and the anticipated expiration dates of any issued patents. Upon the written request of PFIZER, LICENSEE shall provide PFIZER a reasonable opportunity to review and comment on proposed material submissions to any patent office with respect to the Licensed Patent Rights prior to submission and LICENSEE shall reasonably consider any comments provided by PFIZER.

**8.** **ACTUAL OR THREATENED INFRINGEMENT, DISCLOSURE OR MISAPPROPRIATION.**

**8.1.** **Notification**. Each Party shall promptly notify the other Party in writing of its becoming aware of (a) any actual or threatened infringement, misappropriation or other violation or challenge to the validity, scope or enforceability by a Third Party of any Licensed Technology ("**Third Party Infringement**"); or (b) initiation by a Third Party of an opposition proceeding against any Licensed Patent Rights, or initiation by LICENSEE of an opposition against a Third Party or any allegation by a Third Party that Intellectual Property Rights owned by it is infringed, misappropriated or violated by the Development, Commercialization or Use of any Compound or Product ("**Defense Action**").

**8.2.** **Third Party Infringements**.

**8.2.1.** **LICENSEE Right to Enforce**. LICENSEE shall have the first right (but not the obligation), at its own expense, to control enforcement of the Licensed Technology against any Third Party Infringement. Prior to commencing involvement in any such suit, action or proceeding, LICENSEE shall consult with PFIZER and shall consider PFIZER's recommendations regarding the proposed suit, action or proceeding, except to the extent delay would result in the loss of rights by LICENSEE or PFIZER. LICENSEE shall give PFIZER timely notice of any proposed settlement of any such suit, action or proceeding that LICENSEE controls and LICENSEE shall not settle, stipulate to any facts or make any



admission with respect to any Third Party Infringement without PFIZER's prior written consent (not to be unreasonably withheld or delayed) if such settlement, stipulation or admission would: (a) adversely affect the validity, enforceability or scope, or admit non-infringement, of any of the Licensed Technology; (b) give rise to liability of PFIZER or its Affiliates; (c) grant to a Third Party a license or covenant not to sue under, or with respect to, any Intellectual Property controlled by Pfizer (including the Licensed Technology); or (d) otherwise impair PFIZER's, any of its Affiliates' rights in any Licensed Technology or PFIZER's or any of its Affiliates' rights in this Agreement.

**8.2.2.** **PFIZER Right to Enforce.** PFIZER shall have the right (but not the obligation) to control, enforcement of the Licensed Technology against any Third Party Infringement if LICENSEE provides PFIZER with written notice that it is not exercising its right to control such enforcement or if such Third Party does not desist such Third Party Infringement or LICENSEE fails to initiate, or file the relevant response to (as applicable), a suit, action or proceeding with respect to such Third Party Infringement upon the earlier of: (a) expiration of the ninety (90) day period following first receipt by either Party of notice from the other Party of such Third Party Infringement; or (b) fifteen (15) days prior to the deadline for filing, or filing the applicable response to (as applicable), such suit, action or proceeding (including suits, actions or proceedings based on a Third Party's filing of a Paragraph IV Certification under 21 CFR §314.94(a)(12)(i)(A)(4)).

**8.2.3.** **Cooperation**. Notwithstanding anything to the contrary herein, the Party that is not controlling the suit, action or proceeding pertaining to enforcement of the Licensed Technology against Third Party Infringement as described in this Section 8.2 may, at its sole discretion and expense (subject to Section 8.3), join as a party to such suit, action or proceeding, ***provided that*** such Party shall join as a party to such suit, action or proceeding upon the reasonable request and expense of the Party controlling such action if necessary for standing purposes. The Party that is not controlling such a suit, action or proceeding shall have the right to be represented by counsel (which shall act in an advisory capacity only, except for matters solely directed to such Party) of its own choice and at its own expense (subject to Section 8.3) in any such suit, action or proceeding.

**8.2.4.** **Recoveries**. Any and all recoveries resulting from a suit, action or proceeding relating to a claim of Third Party Infringement shall first be applied to reimburse each Party's costs and expenses in connection with such suit, action or proceeding (such recoveries to be applied pro rata in accordance with the costs and expenses incurred by each Party, in the event that the amount of such recoveries is less than the total amount of all such costs and expenses), with any remaining recoveries retained by the



Party that controlled such suit, action or proceeding pursuant to this Section 8.2 (the "**Remaining Recoveries**"). Notwithstanding the foregoing, LICENSEE shall pay PFIZER royalties in accordance with Section 5.1.4(a) on the Remaining Recoveries retained or received by LICENSEE as if such Remaining Recoveries retained or received by LICENSEE were Net Sales in the Calendar Quarter in which such Remaining Recoveries were retained or received, and such Remaining Recoveries retained or received by LICENSEE shall be included in determining the level of Net Sales for purposes of Section 5.1.3(c).

**8.3.** **Defense Actions**. Upon LICENSEE's request, PFIZER shall reasonably cooperate with LICENSEE, to the extent necessary to defend LICENSEE or any sublicensee of LICENSEE in a Defense Action related to LICENSEE's or its Affiliates or sublicensee's Development, Commercialization or Use of any Compound or Product (in accordance with Section 2). LICENSEE shall have all authority with respect to any Defense Action, including the right to exclusive control of the defense of any such suit, action or proceeding and the exclusive right to compromise, litigate, settle or otherwise dispose of any such suit, action, or proceeding, ***provided that*** LICENSEE shall keep PFIZER timely informed of the proceedings and filings, and provide PFIZER with copies of all material communications, pertaining to each Defense Action and LICENSEE shall not settle, stipulate to any facts or make any admission with respect to any Defense Action without PFIZER's prior written consent (not to be unreasonably withheld or delayed) if such settlement, stipulation or admission would (a) adversely affect the validity, enforceability or scope, or admit infringement, of any of the Licensed Technology; (b) give rise to liability of PFIZER or its Affiliates; (c) grant to a Third Party a license or covenant not to sue under, or with respect to, any Intellectual Property controlled by Pfizer (including the Licensed Technology); or (d) otherwise impair PFIZER' or any of its Affiliates' rights in any Licensed Technology or PFIZER's or any of its Affiliates' rights in this Agreement.

## 9. CONFIDENTIALITY

**9.1.** **Definition**. "**Confidential Information**" means the terms and provisions of this Agreement and other proprietary information and data of a financial, commercial or technical nature that the disclosing Party or any of its Affiliates has supplied or otherwise made available to the other Party or its Affiliates, which are disclosed in writing or orally. All Licensed Know-How shall be considered PFIZER's Confidential Information.

**9.2.** **Obligations**. During the term of this Agreement and for [**] years thereafter, the receiving Party will (a) protect all Confidential Information of the disclosing Party against unauthorized disclosure to Third Parties and (b) not use or disclose the Confidential Information of the disclosing Party, except as permitted by or in furtherance of exercising rights or carrying out obligations hereunder or for internal legal, accounting or finance purposes. The receiving Party shall treat all Confidential Information provided by the disclosing Party with the same degree



of care as the receiving Party uses for its own similar information, but in no event less than a reasonable degree of care. The receiving Party may disclose the Confidential Information to its Affiliates, and their respective directors, officers, employees, subcontractors, sublicensees, consultants, attorneys, accountants, banks and investors (collectively, "**Recipients**") who have a need-to-know such information for purposes related to this Agreement, ***provided that*** the receiving Party shall hold such Recipients to written obligations of confidentiality with terms and conditions at least as restrictive as those set forth in this Agreement.

**9.3.** **Exceptions to Confidentiality**. The obligations under this Section 9 shall not apply to any information to the extent the receiving Party can demonstrate by competent evidence that such information:

**(a)** is (at the time of disclosure) or becomes (after the time of disclosure) known to the public or part of the public domain through no breach of this Agreement by the receiving Party or any Recipients to whom it disclosed such information;

**(b)** was known to, or was otherwise in the possession of, the receiving Party prior to the time of disclosure by the disclosing Party;

**(c)** is disclosed to the receiving Party on a non-confidential basis by a Third Party who is entitled to disclose it without breaching any confidentiality obligation to the disclosing Party; or

**(d)** is independently developed by or on behalf of the receiving Party or any of its Affiliates, as evidenced by its written records, without use or access to the Confidential Information.

**9.4.** **Permitted Disclosures**.

**9.4.1.** **Compliance with Law**. The restrictions set forth in this Section 9 shall not apply to any Confidential Information that the receiving Party is required to disclose under Applicable Laws or a court order or other governmental order or to enforce any Licensed Patent Rights under Section 8, ***provided that*** the receiving Party: (a) provides the disclosing Party with prompt notice of such disclosure requirement if legally permitted; (b) affords the disclosing Party an opportunity to oppose or limit, or secure confidential treatment for such required disclosure; and (c) if the disclosing Party is unsuccessful in its efforts pursuant to subsection (b), discloses only that portion of the Confidential Information that the receiving Party is legally required to disclose as advised by the receiving Party's legal counsel.

**9.4.2.** **PFIZER Permitted Disclosures**. Notwithstanding the restrictions set forth in this Section 9, in the event that PFIZER wishes to assign, pledge or otherwise transfer its rights to receive some or all of the Fees payable hereunder, PFIZER may disclose to a Third Party Confidential



Information of LICENSEE in connection with any such proposed assignment, ***provided that*** PFIZER shall hold such Third Parties to written obligations of confidentiality with terms and conditions at least as restrictive as those set forth in this Agreement.

**9.4.3.** **LICENSEE Permitted Disclosures**. Notwithstanding the restrictions set forth in this Section 9, in the event that LICENSEE wishes to enter into a sublicense in accordance with Section 2.2, LICENSEE may disclose to a Third Party Confidential Information of PFIZER relating to the Products or Compounds in connection with any such proposed sublicense, ***provided that*** LICENSEE shall hold such Third Parties to written obligations of confidentiality with terms and conditions at least as restrictive as those set forth in this Agreement.

**9.4.4.** **Disclosure of Agreement Terms**. Notwithstanding the restrictions set forth in this Section 9, a Party may, without the prior consent of the other Party, disclose the terms and provisions of this Agreement to any Third Party that (a) is performing diligence in connection with any permitted Change of Control or similar transaction, (b) is an underwriter or placement agent or its counsel in connection with any offering by LICENSEE, or (c) is a permitted sublicensee under this Agreement or a permitted assignee of this Agreement, ***provided that*** such Party shall hold such Third Party to written obligations of confidentiality with terms and conditions at least as restrictive as those set forth in this Agreement.

**9.5.** **Right to Injunctive Relief**. Each Party agrees that breaches of this Section 9 may cause irreparable harm to the other Party and shall entitle such other Party, in addition to any other remedies available to it (subject to the terms of this Agreement), the right to seek injunctive relief enjoining such action.

**9.6.** **Ongoing Obligation for Confidentiality**. Upon expiration or termination of this Agreement, the receiving Party shall, and shall cause its Recipients to, destroy, delete or return (as requested by the disclosing Party) any Confidential Information of the disclosing Party, except for one copy which may be retained in its confidential files for archive purposes.

## 10. REPRESENTATIONS, WARRANTIES AND COVENANTS

**10.1.** **Representations and Warranties by Each Party**. Each Party represents and warrants to the other Party as of the Effective Date that:

**(a)** it is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation;

**(b)** it has full corporate power and authority to execute, deliver, and perform under this Agreement, and has taken all corporate action required by Applicable Laws and its organizational documents to authorize the execution and delivery of this Agreement and the



consummation of the transactions contemplated by this Agreement;

**(c)** this Agreement constitutes a valid and binding agreement enforceable against it in accordance with its terms;

**(d)** all consents, approvals and authorizations from all governmental authorities or other Third Parties required to be obtained by such Party in connection with this Agreement have been obtained; and

**(e)** the execution and delivery of this Agreement and all other instruments and documents required to be executed pursuant to this Agreement, and the consummation of the transactions contemplated hereby do not and shall not: (i) conflict with or result in a breach of any provision of its organizational documents; (ii) result in a breach of any agreement to which it is a party that would impair the performance of its obligations hereunder; or (iii) violate any Applicable Laws.

**10.2.** **Representations and Warranties by PFIZER**.

**10.2.1.** PFIZER represents and warrants to LICENSEE as of the Effective Date that:

**(a)** PFIZER Controls the Licensed Patent Rights and the Licensed Know-How, and is entitled to grant the licenses specified herein;

**(b)** PFIZER has not granted to any Third Party any rights or licenses under any of the Licensed Patent Rights or Licensed Know-How that would conflict with the licenses granted to LICENSEE hereunder;

**(c)** to its Knowledge, PFIZER does not Control any patents other than those listed on Schedule A, a license to which is necessary to practice the license granted herein

**(d)** PFIZER is not subject to any royalty or similar payment obligation to any Third Party with respect to the grant of rights to PFIZER to practice the Licensed Technology;

**(e)** to its Knowledge, PFIZER has not received any written notice from a Third Party alleging that the Use of the Compounds or Product in the Field within the Territory infringes, misappropriates or otherwise violates the Intellectual Property Rights of a Third Party; and

**(f)** to its Knowledge, there is no claim pending or threatened by PFIZER alleging that a Third Party is or was infringing,



misappropriating or otherwise violating the Licensed Technology in the Field within the Territory.

As used in Section 10.2.1, "**Knowledge**" means first hand and actual knowledge of the officers of PFIZER and is not meant to require or imply that any particular inquiry or investigation has been undertaken including, without limitation, obtaining any type of search (independent of that performed by the actual governmental authority during the normal course of patent prosecution, as applicable, in a jurisdiction) or opinion of counsel.

**10.3. Covenants and Representations and Warranties by LICENSEE**.

**10.3.1.** LICENSEE represents and warrants as of the Effective Date and covenants thereafter to PFIZER that:

**(a)** it shall, and shall ensure all Third Parties that it engages, comply with all Applicable Laws with respect to the performance of its obligations hereunder;

**(b)** without limiting the generality of Section 10.3(a), LICENSEE shall comply with the U.S. Foreign Corrupt Practices Act of 1977 (as modified or amended);

**(c)** it has not and will not directly or indirectly offer or pay, or authorize such offer or payment of, any money, or transfer anything of value, to improperly seek to influence any Government Official; and

**(d)** if LICENSEE is itself a Government Official, LICENSEE represents warrants and covenants that it has not accepted, and will not accept in the future, such a payment or transfer.

As used in this Section 10.3.1, "**Government Official**" means: (i) any elected or appointed government official (e.g., a member of a ministry of health); (ii) any employee or person acting for or on behalf of a government official, agency, or enterprise performing a governmental function; (iii) any political party officer, employee, or person acting for or on behalf of a political party or candidate for public office; (iv) an employee or person acting for or on behalf of a public international organization; or (v) any person otherwise categorized as a government official under local law. "**Government**" is meant to include all levels and subdivisions of non-U.S. governments (i.e., local, regional, or national and administrative, legislative, or executive).

**10.4. No Other Warranties**. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 10, NEITHER PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR



IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, VALIDITY, ENFORCEABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY INFORMATION PROVIDED BY PFIZER OR ITS AFFILIATES IS MADE AVAILABLE ON AN "AS IS" BASIS WITHOUT WARRANTY WITH RESPECT TO COMPLETENESS, COMPLIANCE WITH REGULATORY STANDARDS OR REGULATIONS OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER KIND OF WARRANTY WHETHER EXPRESS OR IMPLIED.

## 11. INDEMNIFICATION

**11.1. Indemnification by LICENSEE**. LICENSEE agrees to indemnify, hold harmless and defend PFIZER and its Affiliates, and their respective officers, directors and employees (collectively, "**PFIZER Indemnitees**"), from and against any Claims arising or resulting from: (a) the Development of a Product by, on behalf of or under grant of rights from LICENSEE, its Affiliates, subcontractors or sublicensees; (b) the Commercialization of a Product by, on behalf of or under grant of rights from LICENSEE, its Affiliates, subcontractors or sublicensees; (c) the gross negligence or wrongful intentional acts or omissions of LICENSEE, its Affiliates, subcontractors or sublicensees in connection with this Agreement; (d) breach by LICENSEE of any representation, warranty or covenant as set forth in this Agreement; or (e) breach by LICENSEE of the scope of the license set forth in Section 2.1. As used herein, "**Claims**" means collectively, any and all Third Party demands, claims, actions and proceedings (whether criminal or civil, in contract, tort or otherwise) for losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees).

**11.2. Indemnification by PFIZER**. PFIZER agrees to indemnify, hold harmless and defend LICENSEE and its Affiliates and their respective officers, directors and employees (collectively, "**LICENSEE Indemnitees**"), from and against any Claims arising or resulting from: (a) the Development and other Use of Compounds and Products by, on behalf of or under grant of rights from PFIZER, its Affiliates, subcontractors or sublicensees prior to the Effective Date; (b) the gross negligence or wrongful intentional acts or omissions of PFIZER, its

Affiliates, or subcontractors in connection with this Agreement; or (c) breach by PFIZER of any representation, warranty, obligation or covenant as set forth in this Agreement.

**11.3. Indemnification Procedure**. In connection with any Claim for which a Party (the "**Indemnified Party**") seeks indemnification from the other Party (the "**Indemnifying Party**") pursuant to this Agreement, the Indemnified Party shall: (a) give the Indemnifying Party prompt written notice of the Claim; ***provided, however,*** that failure to provide such notice shall not relieve the Indemnifying Party from its liability or obligation hereunder, except to the extent of any material prejudice as a direct result of such failure; (b) cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in connection with the



defense and settlement of the Claim; and (c) permit the Indemnifying Party to control the defense and settlement of the Claim; ***provided, however,*** that the Indemnifying Party may not settle the Claim without the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed, in the event such settlement materially adversely impacts the Indemnified Party's rights or obligations. Further, the Indemnified Party shall have the right to participate (but not control) and be represented in any suit or action by advisory counsel of its selection and at its own expense.

## 12. LIMITATION OF LIABILITY

**12.1. Consequential Damages Waiver**. EXCEPT FOR A BREACH OF SECTION 9 OR OBLIGATIONS ARISING UNDER SECTION 11, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS OR LOST REVENUES REGARDLESS OF WHETHER IT HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR THE TYPE OF CLAIM, CONTRACT OR TORT (INCLUDING NEGLIGENCE).

**12.2. Limitations on Claims for Certain Representations and Warranties**. Any claim or cause of action for breach by PFIZER of any of the representations and warranties set forth in Section 10.2.1 (whether based on the indemnification set forth herein, breach of contract, or otherwise) must be made, if at all, by delivery by LICENSEE of notice in writing to PFIZER or through the commencement by LICENSEE of a legal proceeding against PFIZER in a court of competent jurisdiction on or prior to the second anniversary of the Effective Date.

**12.3. Liability Cap**. Except for PFIZER's breach of Section 9, IN NO EVENT SHALL PFIZER'S LIABILITY FOR INDEMNIFICATION OR DAMAGES IN CONNECTION WITH THIS AGREEMENT OR THE SUBSCRIPTION AGREEMENT EXCEED THE CAP, REGARDLESS OF WHETHER PFIZER HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR THE TYPE OF CLAIM, CONTRACT OR TORT (INCLUDING NEGLIGENCE). "**Cap**" means the total Fees paid by LICENSEE to PFIZER during the twelve (12) months immediately preceding the event giving rise to the claim.

## 13. TERM; TERMINATION

**13.1. Term**. The term of this Agreement shall commence as of the Effective Date and, unless earlier terminated as expressly provided herein, shall expire upon the last-to-expire Royalty Term.

**13.2. Termination for Cause**. Each Party shall have the right, without prejudice to any other remedies available to it at law or in equity, to terminate this Agreement in the event the other Party breaches any of its material obligations hereunder or



under the Subscription Agreement and fails to cure such breach within sixty (60) days of receiving notice thereof; ***provided***, ***however***, that if such breach is capable of being cured, but cannot be cured within such sixty (60) day period, and the breaching Party initiates actions to cure such breach within such period and thereafter diligently pursues such actions, the breaching Party shall have such additional period as is reasonable to cure such breach, but in no event will such additional period exceed sixty (60) days. Any termination by a Party under this Section 13.2 shall be without prejudice to any damages or other legal or equitable remedies to which it may be entitled from the other Party. For the avoidance of doubt, LICENSEE's failure to use Commercially Reasonable Efforts to Develop and Commercialize the Product shall constitute a material breach by LICENSEE under this Agreement.

**13.3. Termination by LICENSEE**. LICENSEE may, provided that LICENSEE is not then in material breach of this Agreement, terminate this Agreement at will on a Product-by-Product and country-by-country basis, or in its entirety, in its sole discretion, on not less than ninety (90) days prior written notice to PFIZER.

**13.4. Termination for a Bankruptcy Event**. Each Party shall have the right to terminate this Agreement in the event of a Bankruptcy Event with respect to the other Party. "**Bankruptcy Event**" means the occurrence of any of the following: (a) the institution of any bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against a Party under any bankruptcy, insolvency, or other similar law now or hereinafter in effect, including any section or chapter of the United States Bankruptcy Code, as amended or under any similar laws or statutes of the United States or any state thereof (the "**Bankruptcy Code**"), where in the case of involuntary proceedings such proceedings have not been dismissed or discharged within ninety (90) days after they are instituted; (b) the insolvency or making of an assignment for the benefit of creditors or the admittance by a Party of any involuntary debts as they mature; (c) the institution of any reorganization, arrangement or other readjustment of debt plan of a Party not involving the Bankruptcy Code; (d) appointment of a receiver for all or substantially all of a Party's assets; or (e) any corporate action taken by the board of directors of a Party in furtherance of any of the foregoing actions.

**13.5. Effect of Termination or Expiration**.

**13.5.1.** Upon termination or expiration of this Agreement, LICENSEE shall pay to PFIZER all Fees or other amounts due to PFIZER as of the effective date of termination or expiration within [**] days following the effective date of termination or expiration.

**13.5.2.** Upon expiration of this Agreement pursuant to Section 13.1 (but not upon termination of this Agreement pursuant to any other Section of this Agreement), PFIZER hereby grants to LICENSEE a royalty-free right and license to Use the Licensed Know-How to Use Compounds and Products within the Territory.



**13.5.3.** Subject to Section 13.5.5(e), upon termination of this Agreement, LICENSEE shall have the right to sell its remaining inventory of Products following the termination of this Agreement so long as LICENSEE has fully paid, and continues to fully pay when due, any and all Fees owed to PFIZER, and LICENSEE otherwise is not in material breach of this Agreement.

**13.5.4.** A termination of this Agreement will not automatically terminate any sublicense granted by LICENSEE pursuant to Section 2.2 with respect to a Third Party, ***provided that*** (a) such sublicensee is not then in breach of any provision of this Agreement or the applicable sublicense agreement; (b) PFIZER will have the right to step into the role of LICENSEE as sublicensor, with all the rights that LICENSEE had under such sublicense prior to termination of this Agreement (including the right to receive any payments to LICENSEE by such sublicensee that accrue from and after the date of the termination of this Agreement); and (c) PFIZER will only have those obligations to such sublicensee as PFIZER had to LICENSEE hereunder. LICENSEE shall include in any sublicense agreement a provision in which said sublicensee acknowledges its obligations to PFIZER hereunder and the rights of PFIZER to terminate this Agreement with respect to any sublicensee for material breaches of this Agreement by such sublicensee.

**13.5.5.** Upon termination of this Agreement:

**(a)** LICENSEE hereby grants to PFIZER a non-exclusive, fully paid-up, royalty-free, worldwide, transferable, perpetual and irrevocable license, with the right to sublicense, to Use any and all Developed IP for the Development and Commercialization of the Products;

**(b)** to the extent permitted by applicable Regulatory Authorities, LICENSEE shall: (i) transfer to PFIZER all Regulatory Filings and Regulatory Approvals held by LICENSEE with respect to the Product; and (ii) to the extent subsection (i) is not permitted by the applicable Regulatory Authority, permit PFIZER to cross-reference and rely upon any Regulatory Approvals and Regulatory Filings filed by LICENSEE with respect to the Product;

**(c)** LICENSEE, if requested in writing by PFIZER, shall provide any and all (i) material correspondence with the relevant patent offices pertaining to the LICENSEE's prosecution of the Licensed Patent Rights to the extent not previously provided to PFIZER during the course of the Agreement and (ii) a report detailing the status of all Licensed Patent Rights at the time of termination or expiration;

**(d)** effective as of the date of termination, LICENSEE hereby grants to PFIZER a fully paid-up, royalty-free, worldwide, transferable,



sublicensable, perpetual and irrevocable license to use the Trademarks Controlled by LICENSEE solely identifying a Product for the purpose of Commercializing the Products; and

**(e)** LICENSEE will responsibly wind-down, in accordance with accepted pharmaceutical industry norms and ethical practices, any on-going clinical studies of Products for which it has responsibility hereunder in which patient dosing has commenced or, if reasonably practicable and requested by PFIZER, allow PFIZER or its Affiliates or a Third Party that is designated in writing by PFIZER ("**Designated Affiliate/Third Party**") to complete such trials (and then assign all related Regulatory Filings, Regulatory Approvals, and investigator and other agreements relating to such studies). LICENSEE shall be responsible for any Development costs associated with such wind-down. PFIZER shall pay all Development Costs incurred by either Party to complete such studies should PFIZER request that such studies be completed. During any such winding down of ongoing trials, LICENSEE shall provide such knowledge transfer and other training to PFIZER or its Designated Affiliate/Third Party as reasonably necessary for PFIZER or the Designated Affiliate/Third Party to continue such trial. In connection with such transfer, LICENSEE shall, at PFIZER's option: (i) transfer to PFIZER or the Designated Affiliate/Third Party all Products at the cost paid by LICENSEE to manufacture such Product; (ii) transfer to PFIZER or the Designated Affiliate/Third Party all LICENSEE Inventory owned by LICENSEE at the cost paid by LICENSEE for such LICENSEE Inventory; and (iii) assign to PFIZER or the Designated Affiliate/Third Party any agreements with Third Parties with respect to the Development or Commercialization of the Product. As used herein, "**LICENSEE Inventory**" means all components and works in process produced or held by LICENSEE with respect to the manufacture of Products.

**13.6.** **Survival**. Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing hereunder prior to such expiration or termination. Without limiting the foregoing, the provisions of Sections 5.1.6, 5.2, 5.3, 6, 7.1, 7.2, 9, 11, 12, 13.5, 14.1.2, 15, 16, 17.3 and 17.8 shall survive expiration or termination of this Agreement.

## 14. PUBLICITY AND PUBLICATIONS

**14.1.** **Publicity and Publications**.

**14.1.1. Use of Trademarks**. Subject to PFIZER's rights pursuant to Section 13.5.5(d), neither Party (nor any of its Affiliates or agents) shall use the Trademarks of the other Party or its Affiliates in any press release,



publication or other form of promotional disclosure without the prior written consent of the other Party in each instance.

**14.1.2. Public Statements**. Except as expressly set forth herein, each Party agrees not to issue any press release or other public statement or any information relating to this Agreement, whether written, electronic, oral or otherwise, disclosing the existence of this Agreement or the terms hereof or any other information relating to this Agreement without the prior written consent of the other Party; ***provided, however***, that neither Party will be prevented from complying with any duty of disclosure it may have pursuant to Applicable Laws or the rules of any recognized stock exchange, including disclosure of the terms of this Agreement, so long as the disclosing Party provides the other Party at least ten (10) Business Days prior written notice to the extent practicable and only discloses information to the extent required by Applicable Law or the rules of any recognized stock exchange.

**14.1.3. Publications**. LICENSEE acknowledges that PFIZER personnel may desire to publish in scientific journals or present at scientific conferences scientific, pre-clinical or clinical data derived from research and development related to the Compounds and Products that was conducted by PFIZER or its Affiliates prior to the Effective Date or after the Effective Date pursuant to Section 2.3. Accordingly, no such publication will be submitted and no such presentation shall be made unless a written copy of such proposed publication or presentation is submitted to LICENSEE no later than thirty (30) days before submission for publication or presentation. LICENSEE shall provide its comments with respect to such publications and presentations within fifteen (15) days after its receipt of such written copy from PFIZER. PFIZER shall consider in good faith all comments made by LICENSEE, including limitations on disclosure of Pfizer confidential information requested by LICENSEE consistent with what Pfizer would consider normal procedure for its own development compounds. LICENSEE and PFIZER will each comply with standard academic practice regarding authorship of scientific publications and recognition of contribution of other parties in any publication.

## 15. LICENSEE INSURANCE

**15.1. Insurance Requirements**. LICENSEE shall maintain during the term of this Agreement and until the later of: (a) three (3) years after termination or expiration of this Agreement, or (b) the date that all statutes of limitation covering claims or suits that may be instituted for personal injury based on the sale or use of the Products have expired, commercial general liability insurance from a minimum "A-" AM Bests rated insurance company or insurer reasonably acceptable to PFIZER, including contractual liability and product liability or clinical trials, if applicable, with coverage limits of not less than [**] US dollars ($[**]) per



occurrence and [**] US dollars ($[**]) in the aggregate. LICENSEE has the right to provide the total limits required by any combination of primary and umbrella/excess coverage. The minimum level of insurance set forth herein shall not be construed to create a limit on LICENSEE's liability hereunder. Such policies shall name PFIZER and its Affiliates as additional insured and provide a waiver of subrogation in favor of PFIZER and its Affiliates. Such insurance policies shall be primary and non-contributing with respect to any other similar insurance policies available to PFIZER or its Affiliates. Any deductibles for such insurance shall be assumed by LICENSEE.

**15.2. Policy Notification**. LICENSEE shall provide PFIZER with original certificates of insurance (which may be done through the submission of an electronic copy of such certificate) evidencing such insurance: (a) promptly following execution by both Parties of this Agreement; and (b) prior to expiration of any one coverage. PFIZER shall be given at least thirty (30) days written notice prior to cancellation, termination or any change to restrict the coverage or reduce the limits afforded.

## 16. DISPUTE RESOLUTION

**16.1. General**. Promptly after the written request of either Party, each of the Parties shall appoint a designated representative to meet in person or by telephone to attempt in good faith to resolve any dispute that arises under this Agreement. If the designated representatives do not resolve the dispute within [**] days of such request, then a senior executive of each Party shall meet in person or by telephone to review and attempt to resolve the dispute in good faith. The executive officers shall have [**] days to attempt to resolve the dispute. If the executive officers cannot resolve such dispute within such period of time, then either Party may commence litigation with respect to such matter. If a Party's legal rights would be adversely affected as a result of the passage of time that would occur by participating in the dispute resolution mechanism set forth above, including the effect of applicable statutes of limitations or time-based defenses (such as estoppels or laches), such Party may commence litigation prior to or during the course of such dispute resolution mechanism.

**16.2. Injunctive Relief**. Notwithstanding the foregoing, in the event of an actual or threatened breach hereunder, the aggrieved Party may seek equitable relief (including restraining orders, specific performance or other injunctive relief) in any court or other forum, without first submitting to the dispute resolution procedures set forth in Section 16.1.

## 17. GENERAL PROVISIONS

**17.1. Assignment**. LICENSEE may not assign its rights and obligations under this Agreement without PFIZER's prior written consent, except that: (a) LICENSEE may assign its rights and obligations under this Agreement in whole or in part to one or more of its Affiliates without the consent of PFIZER; and (b) LICENSEE may assign this Agreement in the event of a Change in Control. As used herein,

"**Change in Control**" means the acquisition of LICENSEE or its ultimate parent company by a Third Party or the sale of all or substantially all of LICENSEE's business to which this Agreement relates. LICENSEE shall provide PFIZER with prompt written notice of any such assignment. Any permitted assignee pursuant to clause (b) above shall assume all obligations of its assignor under this Agreement, and no permitted assignment shall relieve the assignor of liability for its obligations hereunder. Any attempted assignment in contravention of the foregoing shall be void. PFIZER may assign its rights and obligations under this Agreement in whole or in part without LICENSEE's consent.

**17.2.** **Severability**. Should one or more of the provisions of this Agreement become void or unenforceable as a matter of law, then such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement, and the Parties agree to substitute a valid and enforceable provision therefor which, as nearly as possible, achieves the desired economic effect and mutual understanding of the Parties under this Agreement.

**17.3.** **Governing Law; Exclusive Jurisdiction**.

**17.3.1.** **Governing Law**. This Agreement shall be governed by and construed under the laws in effect in the State of New York, US, without giving effect to any conflicts of laws provision thereof or of any other jurisdiction that would produce a contrary result.

**17.3.2.** **Jurisdiction**. Each Party to this Agreement, by its execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction of the state courts of the State of New York or the United States District Court for the Southern District of New York for the purpose of any and all actions, suits or proceedings arising in whole or in part out of, related to, based upon or in connection with this Agreement or the subject matter hereof, (b) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such action brought in one of the above-named courts should be dismissed on grounds of *forum non conveniens*, should be transferred to any court other than one of the above-named courts, or should be stayed by reason of the pendency of some other proceeding in any other court other than one of the above-named courts, or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (c) hereby agrees not to commence any such action other than before one of the above-named courts nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action to any court other than one of the above-named courts whether on the grounds of inconvenient forum or otherwise. Notwithstanding the foregoing, application may be made to any court of competent jurisdiction with respect to the enforcement of any judgment or award.



**17.4.** **Force Majeure**. Except with respect to delays or nonperformance caused by the negligent or intentional act or omission of a Party, any delay or nonperformance by such Party (other than payment obligations under this Agreement) will not be considered a breach of this Agreement to the extent such delay or nonperformance is caused by acts of God, natural disasters, acts of the government or civil or military authority, fire, floods, epidemics, quarantine, energy crises, war or riots or other similar cause outside of the reasonable control of such Party (each, a "**Force Majeure Event**"), ***provided that*** the Party affected by such Force Majeure Event will promptly begin or resume performance as soon as reasonably practicable after the event has abated. If the Force Majeure Event prevents a Party from performing any of its obligations under this Agreement for one hundred eighty (180) days or more, then the other Party may terminate this Agreement immediately upon written notice to the non-performing Party.

**17.5.** **Waivers and Amendments**. The failure of any Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party. No waiver shall be effective unless it has been given in writing and signed by the Party giving such waiver. No provision of this Agreement may be amended or modified other than by a written document signed by authorized representatives of each Party.

**17.6.** **Relationship of the Parties**. Nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture, or legal entity of any type between PFIZER and LICENSEE, or to constitute one Party as the agent of the other. Moreover, each Party agrees not to construe this Agreement, or any of the transactions contemplated hereby, as a partnership for any tax purposes. Each Party shall act solely as an independent contractor, and nothing in this Agreement shall be construed to give any Party the power or authority to act for, bind, or commit the other Party.

**17.7.** **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**17.8.** **Notices**. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when: (a) delivered by hand (with written confirmation of receipt); (b) sent by fax (with written confirmation of receipt), ***provided that*** a copy is sent by an internationally recognized overnight delivery service (receipt requested); or (c) when received by the addressee, if sent by an internationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and fax numbers set forth below (or to such other addresses and fax numbers as a Party may designate by written notice):



If to PFIZER:

**PFIZER INC.**
235 East 42nd Street
New York, NY 10017

Fax: 646-348-8157
Attention: General Counsel

If to LICENSEE:

**VERASTEM, INC.**
215 First Street, Suite 440
Cambridge, MA 02142
Fax: 617-812-0059
Attention: Chief Operating Officer

with a copy to:

Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600
Fax: 617-235-0706
Attention: Marc A. Rubenstein

**17.9.** **Further Assurances**. LICENSEE and PFIZER hereby covenant and agree without the necessity of any further consideration, to execute, acknowledge and deliver any and all such other documents and take any such other action as may be reasonably necessary or appropriate to carry out the intent and purposes of this Agreement.

**17.10.** **No Third Party Beneficiary Rights**. This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

**17.11.** **Entire Agreement; Confidentiality Agreement**. This Agreement, together with its Schedules, sets forth the entire agreement and understanding of the Parties as to the subject matter hereof and supersedes all proposals, oral or written, and all other prior communications between the Parties with respect to such subject matter, including, without limitation, that certain letter agreement by and between the Parties, dated April 28, 2012 (the "**CDA**"). The Parties acknowledge and agree that, as of the Effective Date, all Confidential Information (as defined in the CDA) disclosed by PFIZER or its Affiliates pursuant to the CDA shall be considered PFIZER's Confidential Information and subject to the terms set forth in this Agreement. In the event of any conflict between a material provision of this Agreement and any Schedule hereto, the Agreement shall control.

**17.12.** **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall



constitute one and the same instrument. An executed signature page of this Agreement delivered by facsimile transmission shall be as effective as an original executed signature page.

**17.13.** **Cumulative Remedies**. No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under law.

**17.14.** **Waiver of Rule of Construction**. Each Party has had the opportunity to consult with counsel in connection with the review, drafting and negotiation of this Agreement. Accordingly, any rule of construction that any ambiguity in this Agreement shall be construed against the drafting Party shall not apply.

**17.15.** **Construction**. For purposes of this Agreement: (a) words in the singular shall be held to include the plural and vice versa as the context requires; (b) the words "including" and "include" shall mean "including, without limitation," unless otherwise specified; (c) the terms "hereof," "herein," "herewith," and "hereunder," and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; and (d) all references to "Section", "Schedule" and "Exhibit," unless otherwise specified, are intended to refer to a Section, Schedule or Exhibit of or to this Agreement.

[*Signatures on next page*]



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

**PFIZER INC.**

By: /s/ Garry Nicholson
Name: Garry Nicholson
Title: President, General Manager

**VERASTEM, INC.**

By: /s/ Robert Forrester
Name: Robert Forrester
Title: COO

## SCHEDULE A

## Licensed Patent Rights

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## SCHEDULE B

## Transfer Activities

1. **Regulatory Transfer Activities.** The Regulatory Transfer Activities shall be those activities set forth in this Section 1 of this Schedule.

1.1. United States IND: Within [**] Business Days after written notification from LICENSEE that LICENSEE is able to assume all clinical, regulatory, and safety obligations (the "LICENSEE Assumption Notice"), PFIZER shall execute and provide to LICENSEE all documents

(in a form reasonably acceptable to LICENSEE and PFIZER) required to transfer the sponsorship of the IND for the Product in the Field that was submitted to the FDA prior to the Effective Date.

1.2. Transfer Process. Notwithstanding anything to the contrary herein, LICENSEE shall provide PFIZER with the LICENSEE Assumption Notice during the [**] day period immediately following the Effective Date and promptly after execution of the Pharmacovigilance Agreement as provided in Section 4.3.3 of the Agreement, to the extent such agreement is determined to be necessary as set forth in such Section. Within [**] Business Days after LICENSEE's receipt from PFIZER of the documents described in Section 1.1 of this Schedule (as applicable), LICENSEE shall provide to the applicable Regulatory Authority written notification (and any related necessary documents) of the transfer of sponsorship of the Regulatory Filings from PFIZER to LICENSEE ("LICENSEE Transfer Notice"). LICENSEE shall provide to PFIZER a copy of any and all LICENSEE Transfer Notices. In addition, LICENSEE shall provide to PFIZER a copy of any and all notices received by LICENSEE from the applicable Regulatory Authority confirming transfer of any applicable Regulatory Filings from PFIZER to LICENSEE ("Regulatory Confirmation Notice").

1.3. Maintenance of the Regulatory Filings.

1.3.1. Maintenance of IND. For the period beginning on the Effective Date and ending on the effective date of the transfer to LICENSEE of an IND for the Product in the Field that was submitted to a Regulatory Authority prior to the Effective Date (i.e., the date that LICENSEE serves official confirmation of acceptance of regulatory transfer of responsibility) (each, a "Regulatory Transfer Period"), PFIZER shall continue to maintain such IND, at LICENSEE's direction and cost and expense. For clarity, (a) during each Regulatory Transfer Period, PFIZER shall not be permitted to cancel or withdraw the IND that pertains to such Regulatory Transfer Period, and (b) PFIZER will file on a timely basis the annual report for the IND for PF-04554878.

1.4. Interaction with Regulatory Authorities.

1.4.1. During the Regulatory Transfer Period, LICENSEE shall lead all interactions with any Regulatory Authority relating to the Compound in



the Field. Notwithstanding the foregoing, during the Regulatory Transfer Period, if LICENSEE so reasonably requests, PFIZER will participate, by telephone, in certain interactions with Regulatory Authorities relating to any Compound in the Field, at LICENSEE's direction and cost and expense; provided that LICENSEE shall provide PFIZER written notice at least [**] Business Days prior to any such meetings.

1.5. Maintenance of Safety Reporting.

1.5.1. Unless otherwise directed by LICENSEE, PFIZER will submit all PFIZER-generated CIOMS/serious adverse event reports for the Compound to the relevant Regulatory Authority for the Regulatory Transfer Period to LICENSEE.

2. Inventory and Specimen Transfer

2.1. Pharmaceutical Sciences/Manufacturing. PFIZER shall package and ship those amounts of Compound in PFIZER's inventory to the extent set forth on Schedule C to a storage facility of LICENSEE's choosing; such transfer will take place within [**] Business Days following PFIZER's receipt from LICENSEE of its written nomination of a storage facility. Notwithstanding anything to the contrary herein, LICENSEE must identify this facility no later than [**] months after the Effective Date. LICENSEE shall bear all costs and expenses incurred by PFIZER after the Effective Date related to packaging and shipping of the Compound pursuant to this Section of this Schedule.

2.2. Non-Clinical Toxicology Specimens: GLP Studies: Within [**] Business Days of the Effective Date, PFIZER shall identify specimens/data records ("**Items**") that were identified in final reports of GLP studies of the Compounds and Products as having been archived at or by PFIZER. Such Items will be shipped by PFIZER within [**] months following PFIZER's receipt of notice from LICENSEE to an archival facility of LICENSEE choice at LICENSEE expense and direction. This facility must be identified within [**] months of the Effective Date. LICENSEE shall bear all costs and expenses incurred by PFIZER after the Effective Date related to packaging and shipping Items pursuant to this Section.

3. Documentation Transfer

3.1. Initial Request. No later than [**] days after the Effective Date (unless otherwise specified herein or agreed to in writing by the Parties), PFIZER will provide to LICENSEE, those documents set forth in Section 3.3 of this Schedule (the "Documentation") to the extent it exists as of the Effective Date, ***provided that*** PFIZER has the right, but not the obligation to retain (a) copies of all such documents and records; (b) copies of Regulatory Filings and correspondence, and clinical trial data; and (c) any records reasonably required by PFIZER for the conduct of its activities under the terms of its previous obligations, subject to the terms and conditions of the Agreement.



3.2. Method of Transfer. Notwithstanding the foregoing, the Parties agree as follows with respect to the Documentation: PFIZER will provide electronic copies (in Microsoft Office format and/or in other non-proprietary format) of the Documentation by a method reasonably acceptable to LICENSEE; provided that, to the extent such Documentation exists as of the Effective Date in an electronic format, PFIZER shall provide to LICENSEE an electronic copy of such Documentation and to the extent such Documentation does not exist in an electronic format as of the Effective Date, PFIZER shall provide to LICENSEE a physical copy of the Documentation. Notwithstanding the foregoing, in no event shall PFIZER be required to provide (i) data or records that include technology or products other than those that pertain to the Compound, or (ii) laboratory notebooks, internal team meeting minutes, personal notes of PFIZER employees or any of

PFIZER's contractors or subcontractors, or internal intra-PFIZER correspondence. For clarity, in no event shall the Documentation include any of the items set forth in Section 3.3 if such items do not exist.

3.3. Documentation. The Documentation shall be comprised the following documents to the extent containing Licensed Know-How and Controlled by PFIZER or its Affiliates as of the Effective Date (and for the avoidance of doubt the Documentation shall include any of the following relating to either PF-04554878 or PF-00562271 or both of them):

3.3.1. Regulatory. All applications, registrations, licenses, authorisations and approvals, and all correspondence and supporting documents submitted to or received from Regulatory Authorities (including minutes and official contact reports relating to any communications with any Regulatory Authority) as of the Effective Date to the extent pertaining to the Product in the Field (to the extent Controlled by PFIZER or its Affiliates, the "Regulatory Documentation").

3.3.2. Pharmaceutical Sciences/Manufacturing. All data and records to the extent pertaining to the synthesis, formulation and manufacture of the Product in the Field generated by PFIZER or its Affiliates, including summary reports and signed development reports pertaining thereto.

3.3.3. Non-Clinical Toxicology. Copies of all protocols, data, results, and reports related to pivotal (e.g., GLP) non-clinical animal safety and toxicity studies, and reports prepared in support of IND submissions and any descriptions and records pertaining to the production/testing of materials used in non-clinical studies to the extent for the Product in the Field.

3.3.4. Non-Clinical Research and Development. A summary of the data and results from non-GLP studies (and reports based thereon) that were performed in support of IND submissions to the extent for the Product in the Field.



3.3.5. Clinical Development.

3.3.5.1. Copies of all protocols and amendments, study reports and results (including tables, figures and data) of clinical studies of the Product (without limiting the generality of the foregoing, Pfizer will complete the study report for study number [**] and provide such report to LICENSEE by September 30, 2012);

3.3.5.2. Copies of all adverse event reports (e.g., Medwatch or equivalent forms) for any and all clinical trials (investigator-initiated or PFIZER-sponsored) of the Product;

3.3.5.3. Copies of Case Report Forms (CRFs) or equivalents thereof for all completed clinical studies of the Product (i.e., studies with signed-off final clinical study reports);

3.3.5.4. Copies of clinical study raw data from clinical studies of the Product, including such data that is included in study databases; and

3.3.5.5. Copies of all Trial Master Files (TMF's) or equivalents thereof, for all completed clinical studies of the Product (i.e., studies with signed-off final clinical study reports). TMF for studies currently without a signed and approved CSR will be transferred no later than [**] business days after the approval of the respective CSR.

3.3.6. Intellectual Property.

3.3.6.1. A listing of all issued patents and pending patent applications filed with the applicable patent offices encompassed by the term "Licensed Patent Rights" as of the Effective Date, including United States and foreign equivalents thereof, with docket and status reports to be delivered to LICENSEE, within [**] Business Days of the Effective Date; and

3.3.6.2. Copies of file wrappers for such Licensed Patent Rights, will be delivered to LICENSEE within [**] calendar days of the Effective Date; records will be provided electronically in non-proprietary format.

**********

In the event of any conflict between this Schedule B and the main text of the Agreement, the main text of the Agreement shall govern.



## SCHEDULE C

### Quantities of Product and Compound to be Transferred

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For the avoidance of doubt, this table does not include quantities of Product to be provided by Pfizer pursuant to Section 4.4.2.

**ANNEX A**
**FORM OF SUBSCRIPTION AGREEMENT**

**VERASTEM, INC.**

**STOCK SUBSCRIPTION AGREEMENT**

Pfizer Inc. (the "Subscriber") hereby subscribes for 192,012 shares (the "Shares") of common stock, $0.0001 par value (the "Common Stock"), of Verastem, Inc., a Delaware corporation (the "Company"). In consideration for the Shares, the Subscriber has provided certain licenses and rights to the Company pursuant to that certain License Agreement between the Company and Subscriber, dated July 11, 2012.

This subscription is submitted to the Company in accordance with and subject to the terms and conditions described in this Stock Subscription Agreement (the "Agreement") as of July 11, 2012.

1. Subscriber agrees not to sell or otherwise dispose of the Shares in violation of the provisions of the Securities Act of 1933, as amended (the "Act"). Subscriber understands that the Shares are being sold to Subscriber pursuant to an exemption from the registration requirements of the Act and that the Company is relying upon the representations and agreements contained in this Agreement for the purpose of determining whether this transaction meets the requirements for such exemption. Subscriber understands that the Shares must be held indefinitely by Subscriber unless they are later transferred in transactions that are either registered under the Act or exempt from registration. Subscriber understands Subscriber understands that the Company is under no obligation to register the Shares under the Act or any securities law of any state of the United States or of any other jurisdiction or to file for or comply with an exemption from registration, and recognizes that exemptions from registration, in any case, are limited and may not be available when Subscriber may wish to sell, transfer or otherwise dispose of the Shares.

Subscriber understands that the certificate(s) or book entry units representing the Shares will bear the following legends restricting their transfer and that a notation restricting their transfer will be made on the stock transfer books or book entry system of the Company:

> "THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT."

2. The Company hereby represents and warrants to Subscriber as follows:

a. The Company is a corporation duly organized and validly existing under the laws of the State of Delaware. The Company has made available to Subscriber the Restated Certificate of Incorporation of the Company and the Amended and Restated Bylaws of the Company as in effect on the date hereof.

b. The Company has the capacity, full corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions



contemplated hereby. The execution, delivery and performance of this Agreement and the issuance of the Shares to Subscriber have been duly authorized by all necessary corporate action on the part of the Company. The Shares, when issued in accordance with the terms of this Agreement, will be duly and validly issued, fully paid and nonassessable.

3. Subscriber hereby acknowledges, represents and warrants to, and agrees with the Company as follows:

a. Subscriber understands that the offering and sale of the Shares is intended to be exempt from registration under the Act, by virtue of Section 4(2) of the Act and, in accordance therewith and in furtherance thereof, Subscriber represents and warrants to and agrees with the Company as follows:

i. Subscriber acknowledges that the Company has made available documents, records, and books pertaining to this investment that have been requested by Subscriber and Subscriber's advisors.

ii. Subscriber or Subscriber's advisor(s) have had a reasonable opportunity to ask questions of and receive information and answers from a person or persons acting on behalf of the Company concerning the offering of the Shares, as Subscriber has deemed necessary, and all such questions have been answered and all such information has been provided to the full satisfaction of Subscriber.

iii. Subscriber is not subscribing for the Shares as a result of or subsequent to any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio, or presented at any seminar or meeting, or filed by the Company with the U.S. Securities and Exchange Commission, or any solicitation of a subscription by a person not previously known to Subscriber in connection with investments in securities generally.

iv. Subscriber has such knowledge and experience in financial, tax and business matters so as to enable Subscriber to utilize the information made available to Subscriber in connection with the offering of the Shares in order to evaluate the merits and risks of an investment in the Company and to make an informed investment decision with respect thereto and, therefore, it is not relying upon the advice of a purchaser representative in making a final investment decision to purchase Shares.

v. Subscriber is not relying on the Company with respect to the tax and other economic considerations of Subscriber relating to this investment. In regard to such considerations, Subscriber has relied on the advice of, or has consulted with, only Subscriber's own advisors who are unaffiliated with and who are not directly or indirectly compensated by the Company or any affiliate.

vi. Subscriber is acquiring the Shares solely for Subscriber's own account as principal, for investment purposes only and not with a view to the resale or distribution thereof, in whole or in part, and no other person has a direct or indirect beneficial interest in such equity interest.

b. Subscriber recognizes that an investment in the Company involves a high degree of risk and understands that no Federal or state agency has passed upon the Shares or made any finding or determination as to the fairness of this investment.



c. Subscriber is authorized to purchase the Shares and the person signing this Agreement on behalf of such entity has been duly authorized by such entity to do so, and such purchase will not contravene any law, rule or regulation binding on the Subscriber.

d. Subscriber is an "accredited investor" within the meaning of Rule 501 under the Act.

4. The Company hereby represents and warrants as of the date hereof and the Closing Date (except for the representations and warranties that speak as of a specific date, which shall be made only as of such date), to Subscriber that, except as set forth in the Schedules delivered herewith or disclosed in the SEC Reports (as defined below):

a. Subsidiaries. The Company has no direct Subsidiaries. For purposes of this Agreement, "Subsidiary" means any entity in which the Company, directly or indirectly, owns sufficient capital stock or holds a sufficient equity or similar interest such that it is consolidated with the Company in the financial statements of the Company.

b. Organization and Qualification. The Company is an entity duly incorporated, validly existing and in good standing under the laws of the State of Delaware, with the requisite corporate power and authority to own or lease and use its properties and assets and to carry on its business as currently conducted. The Company is not in violation of any of the provisions of its certificate of incorporation or bylaws. The Company is duly qualified to conduct business and is in good standing as a foreign corporation in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not have a Material Adverse Effect. For purposes of this Agreement, "Material Adverse Effect" means any of (i) a material and adverse effect on the legality, validity or enforceability of this Agreement or the Registration Rights Agreement between the Subscriber and the Company (collectively, the "Transaction Documents"), (ii) a material and adverse effect on the results of operations, assets, business or financial condition of the Company, or (iii) any adverse impairment to the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document.

c. Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder. The Company's execution and delivery of each of the Transaction Documents to which it is a party and the consummation by it of the transactions contemplated hereby and thereby (including, but not limited to, the sale and delivery of the Shares) have been duly authorized by all necessary corporate action on the part of the Company, and no further corporate action is required by the Company, its Board of Directors or its stockholders in connection therewith other than in connection with the Required Approvals (as defined below). Each of the Transaction Documents to which it is a party has been (or upon delivery will have been) duly executed by the Company and is, or when delivered in accordance with the terms hereof, will constitute the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.



d. No Conflicts. The execution, delivery and performance by the Company of the Transaction Documents and the consummation by the Company of the transactions contemplated hereby or thereby (including, without limitation, the issuance of the Shares) do not and will not (i) conflict with or violate any provisions of the Company's certificate of incorporation or bylaws or otherwise result in a violation of the organizational documents of the Company, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would result in a default) under, result in the creation of any lien upon any of the properties or assets of the Company or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any contract of the Company that was filed as an exhibit to the SEC Reports pursuant to Item 601(b)(4) or Item 601(b)(10) of Regulation S-K ("Material Contract"), or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company is subject (including federal and state securities laws and regulations and the rules and regulations, assuming the correctness of the representations and warranties made by Subscriber herein, of any self-regulatory organization to which the Company or its securities are subject), or by which any property or asset of the Company is bound or affected, except in the case of clauses (ii) and (iii) such as would not, individually or in the aggregate, have a Material Adverse Effect.

e. Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other person in connection with the execution, delivery and performance by the Company of the Transaction Documents (including, without limitation, the issuance of the Shares), other than (i) filings required by applicable state securities laws, (ii) the filing of a Notice of Sale of Securities on Form D with the U.S. Securities and Exchange Commission (the "Commission") under Regulation D of the Act, (iii) the filing of any requisite notices and/or application(s) to the NASDAQ Global Market ("NASDAQ") for the issuance and sale of the Common Stock and the listing of the Common Stock for trading or quotation, as the case may be, thereon in the time and manner required thereby, and (iv) those that have been made or obtained prior to the date of this Agreement (collectively, the "Required Approvals").

f. Issuance of the Shares. The Shares have been duly authorized and, when issued and paid for in accordance with the terms of this Agreement, will be duly and validly issued, fully paid and nonassessable and free and clear of all liens, other than restrictions on transfer provided for in the

Transaction Documents or imposed by applicable securities laws, and shall not be subject to preemptive or similar rights. Assuming the accuracy of the representations and warranties of Subscriber in this Agreement, the Shares will be issued in compliance with all applicable federal and state securities laws.

g. Capitalization. The number of shares and type of all authorized, issued and outstanding capital stock, options and other securities of the Company (whether or not presently convertible into or exercisable or exchangeable for shares of capital stock of the Company) has been set forth in the SEC Reports (as defined below), and has changed since the date of such SEC Reports only due to stock option grants or other equity awards or stock option and warrant exercises, in each case in the ordinary course of business. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and non-assessable, have been issued in compliance in all material respects with all applicable federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase any capital stock of the Company. Except as specified



in the SEC Reports and in Schedule 4.1(g) hereto: (i) no shares of the Company's outstanding capital stock are subject to preemptive rights or any other similar rights; (ii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares of capital stock of the Company, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional shares of capital stock of the Company, other than those issued or granted pursuant to Material Contracts or equity or incentive plans or arrangements described in the SEC Reports; (iii) there are no material outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing indebtedness of the Company or by which the Company is bound; (iv) to the Company's knowledge, there are no financing statements securing obligations in any material amounts, either singly or in the aggregate, filed in connection with the Company; (v) except as described in the SEC Reports or identified in Schedule 4.1(y) hereto and the Transaction Documents, there are no agreements or arrangements under which the Company is obligated to register the sale of any of their securities under the Act; (vi) there are no outstanding securities or instruments of the Company which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company is or may become bound to redeem a security of the Company (other than in connection with repurchases of unvested stock issued to employees of the Company); (vii) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Shares; (viii) except as provided under the Company's equity or incentive plans described in the SEC Reports, the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (ix) the Company has no liabilities or obligations required to be disclosed in the SEC Reports but not so disclosed in the SEC Reports, other than those incurred in the ordinary course of the Company's businesses and which, individually or in the aggregate, do not or would not have a Material Adverse Effect.

h. SEC Reports. Except as set forth in Schedule 4.1(h) hereto, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Exchange Act of 1934, as amended (the "Exchange Act"), including pursuant to Section 13(a) or 15(d) thereof, for the twelve months preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports"), on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective filing dates, or to the extent corrected by a subsequent restatement or subsequent filings, the SEC Reports complied in all material respects with the requirements of the Act and the Exchange Act, as applicable, and the rules and regulations of the Commission promulgated thereunder, and, except as corrected by subsequent filings, none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company has never been an issuer subject to Rule 144(i) under the Act.

i. Financial Statements. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing (or to the extent corrected by a subsequent restatement). Such financial statements have been



prepared in accordance with U.S. generally accepted accounting principles ("GAAP") applied on a consistent basis during the periods involved, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments.

j. Tax Matters. The Company (i) has prepared and filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, and (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith, with respect to which adequate reserves have been set aside on the books of the Company, except, in each case, where the failure to so pay or file any such tax, assessment, charge or return would not have a Material Adverse Effect.

k. Material Changes. Since the date of the latest financial statements included within the SEC Reports, except as specifically disclosed in the SEC Reports or as set forth in Schedule 4.1(k) hereto, (i) there have been no events, occurrences or developments that have had or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (ii) the Company has not incurred any material liabilities (contingent or otherwise) other than (A) trade payables, accrued expenses and other liabilities incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or required to be disclosed in filings made with the Commission, (iii) the Company has not altered materially its method of accounting or the manner in which it keeps its accounting books and records, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock (other than in connection with repurchases of unvested stock issued to employees of the Company), (v) the Company has not issued any equity securities to any officer, director or Affiliate, except Common Stock (A) issued in the ordinary course as dividends on outstanding preferred stock or (B) issued pursuant to existing Company stock option, stock purchase or other equity plans or executive and director corporate arrangements disclosed in the SEC Reports or (C) issued pursuant to other existing agreements disclosed in the SEC Reports and (vi) there has not been any material change or amendment to, or any waiver of any material right by the Company under, any Material Contract. Except for the transactions contemplated by this Agreement and by the items set forth in Schedule 4.1(k) hereto, no event, liability or development has occurred or exists with respect to the Company or its business, properties, operations or financial condition that would be required to be disclosed by the Company under the Exchange Act at

the time this representation is made that has not been publicly disclosed at least one business day prior to the date that this representation is made. For purposes of this Agreement, "Affiliate" means, with respect to any person, any other person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person, as such terms are used in and construed under Rule 405 under the Act.

l. Environmental Matters. To the Company's knowledge, and except as would not, individually or in the aggregate, have a Material Adverse Effect, the Company (i) is not in violation of any applicable statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or



human exposure to hazardous or toxic substances (collectively, "Environmental Laws"), (ii) does not own or operate any real property contaminated with any substance that is in violation of any Environmental Laws, (iii) is not liable for any off-site disposal or contamination pursuant to any Environmental Laws, and (iv) is not subject to any claim relating to any Environmental Laws; and, to the Company's knowledge, there is no pending investigation that might lead to such a claim.

m. Litigation. To the Company's knowledge and except as specifically disclosed in the SEC Reports, there is no Action which is reasonably likely to have a Material Adverse Effect, individually or in the aggregate, if there were an unfavorable decision. Neither the Company, nor to the Company's knowledge, any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Exchange Act or the Act. For purposes of this Agreement, "Action" means any action, suit, inquiry, notice of violation, proceeding (including any partial proceeding such as a deposition) or investigation pending or, to the Company's knowledge, threatened in writing against the Company, or any of its properties or, to the Company's knowledge, any officer or director of the Company acting in his or her capacity as an officer or director before or by any federal, state, county, local or foreign court, arbitrator, governmental or administrative agency, regulatory authority, stock market, stock exchange or trading facility.

n. Employment Matters. No material labor dispute exists or, to the Company's knowledge, is imminent with respect to any of the employees of the Company which would have a Material Adverse Effect. To the Company's knowledge, none of the Company's employees is a member of a union that relates to such employee's relationship with the Company, and the Company is not a party to a collective bargaining agreement, and the Company believes that its relationship with its employees is good. To the Company's knowledge, it is in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance would not, individually or in the aggregate, have a Material Adverse Effect.

o. Compliance. The Company is not (i) in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company under), nor has the Company received written notice of a claim that it is in default under or that it is in violation of, any Material Contract (whether or not such default or violation has been waived), (ii) in violation of any order of which the Company has been made aware in writing of any court, arbitrator or governmental body having jurisdiction over the Company or its properties or assets, or (iii) in violation of, or in receipt of written notice that it is in violation of, any statute, rule or regulation of any governmental authority applicable to the Company, except in each case as would not, individually or in the aggregate, have a Material Adverse Effect.

p. Regulatory Permits. The Company possesses or has applied for all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct its business as currently conducted and as described in the SEC Reports, except where the failure to possess such permits, individually or in the aggregate, has not and would not have, individually or in the aggregate, a Material Adverse Effect ("Material Permits"), and (i) the Company has not received any notice in writing of proceedings relating to



the revocation or material adverse modification of any such Material Permits and (ii) the Company is unaware of any facts or circumstances that would give rise to the revocation or material adverse modification of any Material Permits.

q. Title to Assets. The Company does not own any real property. The Company has good and marketable title to all tangible personal property owned by it which is material to the business of the Company, free and clear of all liens except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company. Any real property and facilities held under lease by the Company are held by it under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and facilities by the Company.

r. Patents and Trademarks. To the Company's knowledge, except as set forth in Schedule 4.1(r) hereto and except as would not, individually or in the aggregate have a Material Adverse Effect, the Company owns, possesses, licenses or has other rights to use all foreign and domestic patents, patent applications, trade and service marks, trade and service mark registrations, trade names, copyrights, inventions, trade secrets, technology, Internet domain names, know-how and other intellectual property necessary for the conduct of its business as now conducted or as proposed to be conducted in the SEC Reports (collectively, the "Intellectual Property"). Except as set forth in the SEC Reports and except where such violations or infringements would not have, either individually or in the aggregate, a Material Adverse Effect, (a) to the Company's knowledge, there are no rights of third parties to any such Intellectual Property, except for (i) any co-owner of any patent or patent application constituting Intellectual Property who is listed as such on the records of the U.S. Patent and Trademark Office and (ii) the ownership rights of the owners of the Intellectual Property which the SEC Reports disclose is licensed to the Company; (b) to the Company's knowledge, there is no infringement by third parties of any such Intellectual Property; (c) to the Company's knowledge, there is no pending or threatened action, suit, proceeding or claim by others challenging the Company's rights in or to any such Intellectual Property; (d) to the Company's knowledge, there is no pending or threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property; and (e) to the Company's knowledge, there is no pending or threatened action, suit, proceeding or claim by others that the Company infringes or otherwise violates any patent, trademark, copyright, trade secret or other proprietary rights of others.

s. Insurance. The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes to be prudent and customary in the businesses and locations in which the Company is engaged. The Company has not received any

notice of cancellation of any such insurance, nor, to the Company's knowledge, will it be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business.

t. Transactions With Affiliates. Except as set forth in the SEC Reports and other than the grant of stock options or other equity awards in the ordinary course of business, none of the executive officers or directors of the Company is presently a party to any transaction with the Company or to a presently contemplated transaction (other than for services as executive officers and directors) that would be required to be disclosed pursuant to Item 404 of Regulation S-K promulgated under the Act.



u. Internal Accounting Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and in the Company's good faith judgment appropriate action is taken with respect to any differences.

v. Sarbanes-Oxley; Disclosure Controls. To the Company's knowledge, the Company is in compliance in all material respects with all of the provisions of the Sarbanes-Oxley Act of 2002 which are applicable to it, except where such noncompliance would not have, individually or in the aggregate, a Material Adverse Effect. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act).

w. Certain Fees. Except as identified in Schedule 4.1(w) hereto, the Company has not incurred any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement.

x. Private Placement. Assuming the accuracy of Subscriber's representations and warranties set forth in Section 3 of this Agreement, no registration under the Act is required for the offer and sale of the Shares by the Company to Subscriber under this Agreement.

y. Registration Rights. Other than as set forth in the SEC Reports and other than Subscriber or as set forth in Schedule 4.1(y) hereto, no person has any right to cause the Company to effect the registration under the Act of any securities of the Company other than those securities which are currently registered on an effective registration statement on file with the Commission.

z. Listing and Maintenance Requirements. The Company's Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to terminate the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not, in the 12 months preceding the date hereof, received written notice from any trading market on which the Common Stock is listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such trading market. The Company is in compliance in all material respects with the listing and maintenance requirements for continued trading of the Common Stock on NASDAQ.

aa. Investment Company. The Company is not required to be registered as, and immediately following the Closing will not be required to register as, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

bb. Questionable Payments. To the Company's knowledge, neither the Company nor any directors, officers, employees, agents or other person authorized to act on behalf of the Company has, in the course of its actions for, or on behalf of, the Company: (a) directly or indirectly, used any material corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to foreign or domestic political activity; (b) made any material direct or indirect unlawful payments to any foreign or domestic governmental officials or



employees or to any foreign or domestic political parties or campaigns from corporate funds; (c) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (d) made any other material unlawful bribe, rebate, payoff, influence payment, kickback or other material unlawful payment to any foreign or domestic government official or employee.

cc. Application of Takeover Protections; Rights Agreements. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's charter documents or the laws of its state of incorporation that is applicable to Subscriber as a result of Subscriber and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including, without limitation, the Company's issuance of the Shares and Subscriber's ownership of the Shares. Except as disclosed in the SEC Reports, the Company has not adopted any other stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

dd. Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its Exchange Act filings and is not so disclosed which would have a Material Adverse Effect.

ee. OFAC. Neither the Company nor, to the Company's knowledge, any director, officer, agent, employee or Affiliate is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Company will not knowingly directly or indirectly use the proceeds of the sale of the Shares, or lend, contribute or otherwise make available such proceeds to any joint venture partner or other person or entity towards any sales or operations in Cuba, Iran, Syria, Sudan, Myanmar or any other country sanctioned by OFAC or for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

ff. Money Laundering Laws. To the Company's knowledge, the operations of each of the Company are and have been conducted at all times in compliance with the money laundering statutes of applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any applicable governmental agency (collectively, the "Money Laundering Laws") and to the Company's knowledge, no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or threatened.

gg. FDA. To the Company's knowledge, there is no pending, completed or threatened, action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against the Company, and the Company has not received any notice, warning letter or other communication from the U.S. Food and Drug Administration ("FDA") or any other governmental entity, which (i) requires the termination, suspension or material modification of any of the Company's pending preclinical tests, or (ii) otherwise alleges any violation of any laws, rules or regulations of the FDA by the Company, which, either individually or in the aggregate, would have a Material Adverse Effect.

5. With a view to making available to Subscriber the benefits of Rule 144 promulgated under the Act ("Rule 144") and any other rule or regulation of the Commission that may at any



time permit Subscriber to sell securities of the Company to the public without registration, the Company shall:

a. make and keep available adequate current public information, as those terms are understood and defined in Rule 144;

b. use commercially reasonable efforts to file with the Commission in a timely manner all reports and other documents required of the Company under the Act and the Exchange Act; and

c. furnish to Subscriber, so long as Subscriber owns any Shares, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the Securities Act, and the Exchange Act; and (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company.

6. Subscriber agrees to indemnify the Company and hold the Company harmless for all losses, damages, liabilities and expenses (including legal fees) resulting from any breach of any representation, warranty or agreement or any misrepresentation by Subscriber herein. The Company agrees to indemnify Subscriber and hold Subscriber harmless for all losses, damages, liabilities and expenses (including legal fees) resulting from any breach of any representation, warranty or agreement or any misrepresentation by the Company herein.

7. No provision herein may be amended or modified other than by a written document signed by authorized representatives of Subscriber and the Company. Neither party may assign its rights and obligations hereunder without the other party's prior written consent. This Agreement shall be governed by and construed under the laws in effect in the State of New York, without giving effect to any conflicts of laws provision thereof or of any other jurisdiction that would produce a contrary result. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An executed signature page of this Agreement delivered by facsimile transmission shall be as effective as an original executed signature page.

[*Signature Page Immediately Follows.*]



This Stock Subscription Agreement shall be binding on the heirs, representatives, successors and assigns of the Subscriber.

| | |
|---|---|
| **SUBSCRIBER:** | **COMPANY:** |
| **PFIZER INC.** | **VERASTEM, INC.** |
| By: _____ | By: _____ |
| Name: | Name: |
| Title: | Title: |

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**Exhibit 31.1**

**CERTIFICATIONS**

I, Christoph Westphal, M.D., Ph.D. certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Verastem, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

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 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.

/s/ CHRISTOPH WESTPHAL, M.D., PH.D.

Christoph Westphal, M.D., Ph.D.
*President and Chief Executive Officer*

Date: August 13, 2012

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**Exhibit 31.2**

**CERTIFICATIONS**

I, Robert Forrester, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Verastem, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

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 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.

/s/ ROBERT FORRESTER

Robert Forrester
*Chief Operating Officer*

Date: August 13, 2012

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**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 Verastem, Inc. (the "Company") for the period ended June 30, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Christoph Westphal, M.D., Ph.D., President and Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ CHRISTOPH WESTPHAL, M.D., PH.D.

Christoph Westphal, M.D., Ph.D.
*President and Chief Executive Officer*

Date: August 13, 2012

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**Exhibit 32.2**

**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 Verastem, Inc. (the "Company") for the period ended June 30, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Robert Forrester, Chief Operating Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ ROBERT FORRESTER

Robert Forrester
*Chief Operating Officer*

Date: August 13, 2012

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